

DEPOSITION OF EDWARD L. ROBINSON

June 22, 2006

Pages 1 through 276

**CONDENSED TRANSCRIPT AND CONCORDANCE
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EXHIBIT I

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

LORI ANN MORRIS,

Plaintiff,

Vs.

CIVIL ACTION NO.

3:02-CV-962-T

FLORIDA TRANSFORMER,
EDWARD NEAL THOMPSON,

et al.,

Defendants.

DEPOSITION OF EDWARD L. ROBINSON, taken
pursuant to stipulation and agreement before
Haley A. Phillips, Certified Shorthand Reporter,
and Commissioner for the State of Alabama at Large,
in the Law Offices of Henry L. Penick, 319 17th
Street, Birmingham, Alabama, on Thursday, June 22,
2006, commencing at approximately 10:05a.m.

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APPEARANCES

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FOR THE DEFENDANT:

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STIPULATION

It is hereby stipulated and agreed by and between counsel representing the parties that the deposition of EDWARD L. ROBINSON is taken pursuant to the Federal Rules of Civil Procedure and that said deposition may be taken before Haley A. Phillips, Certified Shorthand Reporter, and Commissioner for the State of Alabama at Large, without the formality of a commission, that objections to questions other than objections as to the form of the question need not be made at this time but may be reserved for a ruling at such time as the said deposition may be offered in evidence or used for any other purpose by either party provided for by the Statute.

It is further stipulated and agreed by and between counsel representing the parties in this case that the filing of said deposition is hereby waived and may be introduced at the trial of this case or used in any other manner by either party hereto provided for by the Statute regardless of the waiving of the filing of the same.

It is further stipulated and agreed by and

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1 not aware of any classes anywhere that were
 2 specifically accident reconstruction. And
 3 I don't know of anybody that gives a
 4 degree -- an academic degree in it now.
 5 It's being talked around several places.
 6 And right now it's all short courses and
 7 seminars and that sort of thing.
 8 Q. Well, you learned your accident
 9 reconstruction knowledge through on-the-job
 10 training and seminars?
 11 A. Right.
 12 Q. Did you go to the Northwestern School?
 13 A. No. I haven't been to Northwestern. I've
 14 been to a number of the IPTM seminars. And
 15 back in the '80s a number of people started
 16 forming professional groups, professional
 17 organizations in accident reconstruction.
 18 I'm a member of seven or eight of those.
 19 And most of those have at least annual, if
 20 not more frequently, meetings with seminars
 21 attached to the meetings. And I've been to
 22 I don't know how many of those, 60 or 70
 23 or ...

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1 Q. What does IPTM stand for?
 2 A. That's International Police Technology --
 3 Institute of Police.
 4 Q. What's the M stand --
 5 A. Institute of Police Technology and
 6 Management. It's a part of the University
 7 of North Florida in Jacksonville.
 8 Q. Have you ever been a law enforcement
 9 officer?
 10 A. No.
 11 Q. Have you had any training or experience in
 12 visual perception?
 13 A. Not formal training.
 14 Q. Do you consider yourself an expert in
 15 visual perception?
 16 A. No.
 17 Q. If you need expert opinions in a case
 18 regarding visual perception, do you farm
 19 that out or do you associate somebody?
 20 A. It depends on what's involved. I have used
 21 Dr. Michael Loop at the School of Optometry
 22 several times in problems relating to
 23 visual perception.

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1 Q. Did you use Dr. Loop in this case?
 2 A. No, I did not.
 3 Q. And define what you mean by visual
 4 perception.
 5 A. Being able to see something and realize
 6 that you're seeing it. In the case of
 7 visual perception, many times we want to
 8 try to give court exhibits that are
 9 representative of what a person saw or
 10 didn't see. And Dr. Loop has been helpful
 11 in doing light-level measurements and
 12 taking photographs that were representative
 13 of what people would or wouldn't see at
 14 accident sites.
 15 Q. Have you ever testified on behalf of a
 16 party with or without the use of Dr. Loop
 17 that a particular object or vehicle could
 18 not have been seen by the -- by the party
 19 or by one of the parties in time to avoid
 20 an accident?
 21 A. I'm sorry. Repeat that, now. I'm thinking
 22 back over 40 years, so ...
 23 Q. Yeah. Have you ever testified on behalf of

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1 a party involved in a motor vehicle
 2 accident that the other vehicle or object
 3 involved in the accident was not
 4 discernible or that party could not have
 5 seen that object or vehicle in time to
 6 avoid an accident?
 7 A. Yeah. I seem to remember a case. I was
 8 working on defense for the truck that had
 9 hit a pedestrian that was intoxicated and
 10 somewhat into the road in dark clothing at
 11 night. And I don't remember the details of
 12 it. I just remember that general feature
 13 of it.
 14 Q. Do you happen to remember the parties or
 15 the attorneys involved or the --
 16 A. (Witness shakes head.)
 17 Q. Could you find it on your list of --
 18 A. It was further back than my list of
 19 testimony goes. It was probably 15 years
 20 ago or more. I can't really remember any
 21 of the parties now.
 22 Q. Was it a case that went to trial?
 23 A. No.

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1 Q. Do you have any medical training?
2 A. No, not formal medical training. I've been
3 involved in paramedical sort of stuff, like
4 radiation safety and been raised in safety
5 officer at UAB, but I wasn't involved in
6 the day-to-day surveys. It was more
7 administrative. And I've taught courses
8 in -- a licensure course for ...
9 Q. Well, you're not a medical doctor?
10 A. No, I'm not.
11 Q. You don't hold yourself out as an expert in
12 this case being able to determine cause of
13 death?
14 A. Oh, no. No. One thing that you were
15 asking about formal education, I would go
16 to experience also. At one point I had a
17 joint appointment in the forensic science
18 department from the justice program, a
19 graduate program. And I did for a period
20 of time give lectures in one of their
21 introductory graduate courses, a couple
22 hours lecture on accident reconstruction.
23 I didn't try to make an accident

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1 reconstructionist out of people in two
2 hours, but I tried to show them the
3 physical basis of it and show them more or
4 less what could or couldn't be done, so
5 they would know when to yield for a
6 reconstruction and when it wasn't going to
7 be applicable.
8 Q. Do you have any training in biomechanics?
9 A. No.
10 Q. So you don't hold yourself out in this case
11 as an expert in biomechanics?
12 A. No.
13 Q. You're not holding yourself out as an
14 expert in this case on what specific
15 injuries might have caused the death of
16 Mr. Morris in this case?
17 A. No.
18 Q. Do you hold yourself out as an expert on
19 what -- in this case on what specific
20 objects caused any specific injuries to
21 Mr. Morris?
22 A. Well, in the sense of discerning between
23 the most likely result of the truck

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1 overturn versus the impact by the other
2 truck, I think that we can make some
3 separation on that.
4 Q. Well, wouldn't a biomechanic --
5 biomechanical expert be the proper person
6 qualified to determine what physical
7 injuries on Mr. Morris' body were caused by
8 what particular objects during the accident
9 sequence?
10 A. I'm not trying to do that.
11 Q. All right, sir.
12 A. My general experience in overturned trucks
13 is that the injuries that Mr. Morris
14 received -- the very serious injuries I've
15 never seen before in an overturned truck
16 accident, so I would think it highly
17 unlikely that these injuries would have
18 been associated with the overturn. On the
19 other hand, impact by another vehicle of
20 comparable mass at 70 miles an hour or 60
21 miles an hour would be expected to cause
22 some very serious injuries.
23 Q. But you're not testifying as to any

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1 specific injuries on Mr. Morris' body were
2 caused by any specific objects during the
3 accident sequence?
4 A. I'm not trying to bring it down to that
5 point, no.
6 Q. You're not going to give any opinions on
7 that?
8 A. I'm just going to say that I think his
9 serious injuries were due to the impact,
10 not the overturn.
11 Q. While we're on that, what -- at what
12 speed -- Did you calculate a speed of
13 the -- And I'm going to call for purposes
14 of this deposition -- And we're going to
15 get this confused I'm sure, because I
16 confuse it in my mind. I'm going to try to
17 differentiate between Mr. Morris' vehicle
18 by calling it the Kenworth vehicle and the
19 vehicle driven by Mr. Thompson by calling
20 it the Peterbilt vehicle. Now, we both
21 know that that's just referring to the
22 tractor -- or the truck part of the rig,
23 not the trailer?

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- 1 A. No. He has a degree in forensic science.
2 Q. Okay. He doesn't have -- He does not have
3 a college degree in mechanical engineering?
4 A. But he has completed all of the courses for
5 the bachelor's in mechanical engineering so
6 that the UAB graduate program admitted him
7 to the master's of mechanical engineering
8 program.
9 Q. So as of what date was he admitted to the
10 master's program?
11 A. As of this summer.
12 Q. 2006?
13 A. Yeah.
14 Q. Did either -- Did Mr. Johnson do any
15 compilation of data or calculations to
16 determine the speed of the Kenworth as it
17 left I-85?
18 A. I don't recall. I don't believe he did. I
19 think he was in this case just involved in
20 the site mapping and drawing -- using the
21 CAD program to draw the site map.
22 Q. Just data collection and employing the CAD
23 for the map?

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- 1 A. Right.
2 Q. Did either Mr. Johnson or Mr. Messerschmidt
3 retrieve any black box data or
4 equivalent-type data from the Kenworth?
5 A. These are too old to have it. '98, '95.
6 Q. Neither the Kenworth nor the Peterbilt had
7 any black box data?
8 A. Well, we never saw the Kenworth. We don't
9 know.
10 Q. The Kenworth?
11 A. The Kenworth, we never were able to see
12 that.
13 Q. Kenworth is Morris' vehicle?
14 A. I'm sorry. I've gotten -- Now I've done
15 it, reversed them.
16 The Peterbilt, we never saw. We saw
17 only the cab portion of Morris' truck that
18 had been knocked off the frame. When we
19 went to -- or they -- I didn't go with
20 them. When they went to the site where it
21 was stored, the remainder of the truck, the
22 frame and motor and transmission had all
23 been parted out and the frame cut up, so

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- 1 there was nothing to see except the cab
2 itself and the seat and the remains of
3 that.
4 Q. The -- In the Kenworth, the cab portion
5 that Johnson and Messerschmidt inspected --
6 Did they both inspect it?
7 A. I don't think so. I think only
8 Messerschmidt went. I can't recall whether
9 Johnson went or not.
10 Q. On that inspection, did Messerschmidt look
11 for any equipment or instruments in the cab
12 of the Kenworth that might have had data
13 equivalent to the kind of data you get from
14 what we're calling the black box or a CDR?
15 A. I'm sure he did. But the boxes we're
16 talking about are always mounted on the
17 motors in trucks. The only -- There's one
18 small after-market unit that is mounted in
19 the cab, although I think it's connected to
20 the unit on the motor. They were not very
21 common in the middle and late '90s. But if
22 that unit were there, they would have noted
23 that and tried to download it --

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- 1 Q. I'm with you. Let me make sure I
2 understand completely. The only part of
3 the -- what I'm calling the Kenworth
4 tractor or truck portion of Mr. Morris' rig
5 that was physically inspected by anyone on
6 your behalf in this case was the cab part,
7 the occupant part that was separated at
8 some point during the accident sequence
9 from the frame of the tractor?
10 A. That's correct.
11 Q. Neither you nor anyone on your behalf has
12 physically inspected the engine, the motor,
13 that part of the Kenworth tractor?
14 A. That's correct.
15 Q. What about the framework underneath?
16 A. That had been cut up too. I think there
17 was nothing left of it -- any of that.
18 Q. What about the trailer that was being
19 pulled by the Kenworth?
20 A. We did not see that either.
21 Q. Did either you or anyone on your behalf for
22 purposes of this case have an opportunity
23 to inspect any of the braking -- any parts

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1 of the brake system or the electrical or
2 light system on the Kenworth tractor or
3 trailer?

4 A. No.

5 Q. When did -- When did Messerschmidt
6 inspect -- And I apologize for just
7 referring to him by last name, but that
8 will short-circuit some of this. When did
9 Messerschmidt inspect the cab of the
10 Kenworth?

11 Those blue pages that you're looking
12 at, do we have a copy of that?

13 A. Yes. They're in the file.

14 Q. That's just a chronology of events?

15 A. That's actually an invoice to the client
16 which includes that.

17 Oh, that was the first thing that was
18 done. That was October 7, '04. Went to
19 Kerns Truck Parts. And I believe one of
20 the -- met there was someone named Don
21 Glenn. He may be from Rimkus. I'm not
22 sure. I think there was another expert
23 there at the time he inspected it. There

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1 was some other party there that was not
2 part of our organization.

3 Q. And that was on October 7, '04?

4 A. Right.

5 Q. By your understanding at October -- as of
6 October 7, '04, the tractor framework
7 portion, engine portion of the Kenworth
8 unit had already been cut up and disposed
9 of?

10 A. Yes. That's what they told Messerschmidt,
11 that they had parted out the engine and
12 transmission and cut up the frame.

13 Q. Where -- Do you know where the batteries
14 were located on that Kenworth?

15 A. No, not exactly. The usual location is on
16 the left side of the frame about the back
17 of the cab.

18 Q. Sitting here today, you can't testify on
19 that Kenworth whether the -- where the
20 battery was located?

21 A. That's correct.

22 Q. No one on your behalf was able to inspect
23 the electrical system that existed in the

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1 tractor portion and engine area to
2 determine if there were any defects or
3 deficiencies that might have existed in
4 that system prior to this accident?

5 A. Yes. For both trucks, yes, we did not.

6 Q. Do you know a person named LeBleu --

7 A. I don't.

8 Q. -- who's involved in the case?

9 A. No, I don't.

10 Q. Do you know if or when he was able to
11 inspect any part of the Kenworth?

12 A. No, I don't.

13 Q. So any opinions that you would have or that
14 your people would have regarding the
15 electrical system on this Kenworth would be
16 based on something other than an actual
17 physical inspection of that system?

18 A. Right. We did not inspect the system. We
19 did not have an opportunity to.

20 Q. And wouldn't it be fair to categorize any
21 opinions that you would give on the
22 electrical system for that very reason as
23 speculative?

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1 MR. PENICK: Object to the form of
2 the question.

3 Q. Wouldn't that be a fair characterization?

4 A. We haven't turned our attention to any
5 problems with the electrical system. The
6 only question that's come up was could the
7 lights of the truck have remained on after
8 it overturned.

9 Q. Well -- And it could.

10 A. That's the only specific question.

11 Q. And any opinion that you would give or that
12 Messerschmidt or Johnson would give as
13 to -- as to whether the lights on the
14 Kenworth could have been on either before
15 or after the rollover would have to be
16 speculation and conjecture since you had no
17 opportunity to inspect that system either
18 before that -- this accident or after the
19 accident?

20 MR. PENICK: Object to the form of
21 the question.

22 A. Well, I hate to call it conjecture to
23 assume that a truck would be driving down

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1 Q. Well, let me ask you this. We don't know
2 sitting here today, June 22, 2006 -- We do
3 not know what caused the Kenworth vehicle
4 to leave I-85 and go into the median?
5 A. I don't.
6 Q. And we don't have -- you don't have any
7 information, hard information from any
8 source as to what caused that, do you?
9 A. That's correct.
10 Q. We don't know whether there was a
11 mechanical failure or a defect on the
12 Kenworth tractor or trailer that caused
13 that, do we?
14 A. That's correct. We weren't able to inspect
15 that.
16 Q. And we don't know if at any time before
17 that vehicle -- the Kenworth vehicle left
18 the pavement -- I-85 pavement, we don't
19 know whether Mr. Morris applied any brakes?
20 A. I don't know that.
21 Q. All right. And the -- Does the absence of
22 any -- And I'm talking about the Kenworth
23 now. Does the absence of any tire markings

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1 or what the jury may refer to as skid marks
2 on I-85 tell you that Mr. Morris at no time
3 applied his brakes before leaving I-85?
4 A. No.
5 Q. So he could apply his brakes, hard braking
6 without locking his brakes and without
7 leaving skid marks?
8 A. It could be done.
9 Q. And that same -- that same thing is true of
10 the Peterbilt --
11 MR. PENICK: Let me -- Let me
12 object to the question,
13 because I'm not so sure. Are
14 you talking about skid marks
15 on the pavement or --
16 MR. BROUGHTON: Yes.
17 MR. PENICK: -- skid marks within
18 the median? If he went off
19 the median, you must be
20 talking about skid marks --
21 MR. BROUGHTON: Mr. Robinson knows
22 what I'm talking about.
23 Q. And the same thing is true of the

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1 Peterbilt. The fact that you don't find
2 skid marks behind a loaded eighteen-wheeler
3 does not mean that the driver does not
4 apply hard braking. It just means that for
5 whatever reason you didn't have a locking
6 of the brakes; correct?
7 A. There can be a lot of reasons for failure
8 to lock the brake. It can be improperly
9 adjusted brakes. It can be failure to
10 apply maximum brakes. It could be that you
11 had ABS, which you wouldn't have on these
12 trucks, and in which case you normally get
13 skip skids or faint skip skids. But most
14 commonly once you apply brakes hard,
15 emergency braking, hard maximum braking, a
16 vehicle has to have time for the wheels to
17 slow down and lock up and then the contact
18 patch of the rubber and the pavement to get
19 hot enough to start leaving visible traces
20 of rubber. So, normally, vehicles will
21 lose eight or ten percent of their speed
22 before the skid marks start after emergency
23 brake application.

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1 Q. How many seconds are we talking about does
2 it take for the -- And I'm just talking
3 about after the driver has realized that
4 there's a need for what you were calling
5 hard braking. How many seconds does it
6 then take for that message to get to his
7 foot, to get to the brake pedal, to get
8 into the system and to, as you've put it,
9 eventually cause the tires to heat up
10 enough to cause a mark?
11 A. Well, that's a complex question, but let me
12 go back to the start. You're asking first
13 about perception-reaction.
14 Q. No. No.
15 A. Yes, you were. You said from when the
16 driver sees the object in the road.
17 Q. No. No. I'm past that.
18 A. All right.
19 Q. And what I'm doing is -- He's made the
20 decision that he's going to have to apply
21 some hard braking.
22 A. Uh-huh (positive response).
23 Q. He's already perceived. He's already

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1 started his reaction. And what I'm saying
2 is right now -- All I'm asking you right
3 now is from the time he starts his
4 application of hard braking on the pedal to
5 the time it leaves or heats up the pavement
6 enough to start leaving a -- what you would
7 call a tire mark or a skid mark, what's the
8 range? I know it's not -- there's nothing
9 exact about that.
10 A. Sure.
11 Q. What's the minimum and what's the maximum
12 time?
13 A. Well, it's going to be dependent on the
14 speed for time and also for distance. When
15 you press the brake pedal on a truck,
16 that's really an air valve.
17 Q. Right.
18 A. And this puts the air into the air lines on
19 the truck, which may have something of the
20 order of a tenth of a second to get to the
21 drive wheels of the tractor, and they have
22 two-tenths or a three-tenths of a second
23 delay to get to the trailer wheels. And it

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1 depends on the plumbing and the length of
2 the lines and so on, what's their
3 diameter.
4 So the full truck brake system comes on
5 in parts. You might say it takes a couple
6 tenths of a second for you to have full
7 braking. If he's going 70 miles an hour,
8 as I believe your driver testified, which
9 is a little over 100 feet per second, then
10 he would travel 20 feet or 30 feet during
11 that time.
12 Now, if it takes another ten percent
13 speed loss to get the wheels to sloughing
14 off enough rubber to be visible, then he
15 would have dropped from 70 to 63. So
16 you're looking at an average speed of
17 somewhere around 66 miles per hour, which
18 would be in the ballpark of 90 feet per
19 second. Well, that would be easiest to do
20 with a kinematic equation to say two times
21 the deceleration times the distance equals
22 the difference in the square of the initial
23 and final speeds. And I think that --

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1 Seems like I punched that through on a
2 calculator and it turns out to be 60 or 70
3 feet, another 20 feet for the delay. So
4 we're talking about maybe 80 feet he would
5 travel from the time he stomps the brake
6 pedal until he starts leaving visible skid
7 marks. Could be less than that; could be
8 more than that.
9 Q. What do the books say -- And by books, what
10 are the -- what are the authoritative texts
11 or treatises that you would go to for
12 information on perception-reaction times
13 for a driver?
14 A. Well, right now I think the best
15 compilation of that is a program called
16 Drive 3. It's in the library of
17 reconstruction programs called REC-TEC.
18 Q. Drive 3, is that --
19 A. That's one of the programs in --
20 Q. I know. But the three -- Is the three a
21 numeral three or a roman numeral three
22 or ...
23 A. No. Just number three.

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1 Q. Okay. Drive 3, is that --
2 A. That was written by Jeff Muttart, who's
3 probably now the best known and best
4 qualified in human factors reconstruction.
5 Q. M-U-T --
6 A. M-U-T-T-A-R-T, I believe. He's now working
7 on his Ph.D. in -- I'm not sure what
8 department -- psychology, criminal
9 psychology or -- Anyway, it's on human
10 factors. And I believe that it's at the
11 University of Massachusetts.
12 Q. How do I -- Do I access that on the
13 Internet?
14 A. He does have an address, but I don't know
15 it right off. I'm sure I have it.
16 Q. Well, all I'm looking for is Drive 3.
17 A. Oh. That, you can get from the REC-TEC
18 company.
19 Q. W-R-E-C-K?
20 A. No. It's R-E-C, dash, T-E-C. And I think
21 that's just REC-TEC dot com. They'll let
22 you download an examination copy of it.
23 Their entire program is a few thousand

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1 dollars. In fact, I just talked to George
 2 Bonnett this morning, and he was telling me
 3 about some new parts he put in the
 4 program. He's the author of that program.
 5 Q. You're not a human factors expert?
 6 A. I have some experience with human factors,
 7 but that's not my main area of expertise.
 8 I refer to the literature.
 9 Q. You're not offering yourself as a human
 10 factors expert --
 11 A. No.
 12 Q. -- in the case?
 13 A. No. But I'm saying that I know what the
 14 literature says about perception-reaction.
 15 Q. Right. But you're not offering any
 16 opinions as a human factors expert in this
 17 case?
 18 A. No. No.
 19 Q. The Drive 3, does -- Is the information on
 20 perception-reaction time similar in the
 21 Drive 3 program to what is reported in the
 22 Northwestern accident reconstruction
 23 manuals and books?

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1 A. It will vary, because what Drive 3
 2 attempted to do is to take the results of a
 3 lot of experimental results and weight the
 4 various factors in. I'm not sure -- I've
 5 looked at the program. I have not run it
 6 myself. But I know that it has a number of
 7 factors that go into the program, like
 8 whether it's daylight or dark, whether the
 9 driver is fatigued or not. I don't know
 10 what all goes in. But it'll give you a
 11 range of values of perception-reaction time
 12 that it operates from.
 13 Q. What is the perception -- What is that
 14 range of values for perception-reaction
 15 time?
 16 A. Like I said, I didn't run the Drive 3
 17 program on this. But the literature ranges
 18 that I would use as the normal
 19 perception-reaction time most defaulted to
 20 one and a half seconds. And I would say
 21 that's a lower range, because this is at
 22 night. And I would think two seconds
 23 should be an upper limit for a professional

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1 driver.
 2 Q. Do you -- Are you familiar with or have you
 3 ever seen any studies of
 4 perception-reaction times of reasonable
 5 truckdrivers faced with darkness and
 6 another overturned vehicle like the
 7 Kenworth in this case where nothing but the
 8 underside of the vehicle is facing that
 9 oncoming driver?
 10 A. I have not duplicated this. No, I don't
 11 have an example that duplicates this.
 12 Q. Wouldn't it be fair to say that whether
 13 the -- whether any of the lights on that
 14 Kenworth were still operable after the
 15 rollover or not that that would be -- this
 16 would fit in the very complex area for
 17 perception-reaction times?
 18 A. You're going to have to define for me that
 19 questionable phrase, would it be fair to
 20 say. Do you mean is it correct, is it
 21 approximately correct, is it --
 22 Q. Wouldn't it be reasonable for the jury to
 23 conclude in this case that with what

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1 this -- the way this Kenworth was laying
 2 out there in the highway with nothing but
 3 the underside of that truck facing oncoming
 4 traffic, that that would be what the
 5 literature in the Drive 3 and the
 6 Northwestern books would classify as a
 7 complex situation for a truckdriver to
 8 assimilate, perceive and react to?
 9 A. I usually associate complex with a lot of
 10 vehicles and a lot of different movement.
 11 I will say I think this would come in the
 12 upper range of perception-reaction time,
 13 because the -- recognizing what's in front
 14 of you is -- it's an unusual thing to see
 15 in front of you.
 16 Q. Nobody -- No driver -- No driver even of an
 17 eighteen-wheeler is going to expect to see
 18 another eighteen-wheeler rig overturned
 19 blocking the highway as this one -- as this
 20 Kenworth was at the time of this accident?
 21 MR. PENICK: Object to the form of
 22 the question. It requires
 23 speculation.

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1 A. Actually that one would probably be
2 easier. When you do a speed calculation in
3 parts like this, you start at the rest part
4 and work backwards. And to make an
5 estimate of a drag factor with the truck
6 overturned would probably be more reliable
7 than with wheels in the mud. So to find
8 out where -- what his speed was at the time
9 he overturned would probably be more
10 reliable than the speed at which he left
11 the road.
12 Q. But that has not been done up to this
13 point?
14 A. If it's been done, I didn't do it.
15 Messerschmidt may have done it and not put
16 it in the file. I don't know.
17 Q. On what occasions would you have somebody
18 working on a case in litigation to do
19 calculations and not put them in a file?
20 A. I've done it myself. If I'm just looking
21 at a rough calculation to determine whether
22 something is a go or no go and determine
23 that and then move on and never put it in

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1 the file.
2 Q. Did Messerschmidt ever tell you what speed
3 the vehicle -- the Kenworth vehicle was
4 going when it came back up onto I-85?
5 A. I think the answer that I gave you on that
6 a while ago was that he indicated to me
7 that there wasn't evidence of excess speed
8 and if he ever said what he thought the
9 speed was, I don't recall it.
10 Q. Excess speed in your vernacular, if I heard
11 you earlier, means he wasn't going 90 miles
12 an hour when he left I-85?
13 MR. PENICK: Object to the form of
14 the question.
15 A. Well, that was a number that I picked out
16 to say he wasn't doing that fast. No, I
17 couldn't say that he wasn't going 71 or 72
18 or something like that. I don't know.
19 But --
20 Q. Or 75?
21 A. I don't know. The thing that we run
22 into -- I have not gone back and reviewed
23 the data and the calculations on that.

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1 What you run into with speed is that the
2 total stop distance tells us the square of
3 the speed. So if you go up ten percent in
4 speed, you're going up 20 percent in stop
5 distance. So if you take a look at
6 distance traveled and you put in a
7 reasonable drag factor and it indicates
8 that you're not going at excessive speed,
9 then that's about as good as you can do.
10 Q. Well, a legal speed for I-85 in your
11 opinion or testimony -- and I guess
12 Messerschmidt's opinion or testimony is the
13 posted speed limit, 70 miles per hour or
14 anything within, say, ten percent of that
15 up to 77? That would be a legal -- Would
16 that be a legal speed?
17 A. I didn't say that.
18 Q. Well, do you -- How do you know that -- How
19 do you know that the Morris -- the Kenworth
20 vehicle was traveling under 75 miles an
21 hour?
22 A. I didn't do the calculations, so all I can
23 say is that the indications were that there

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1 was no evidence of excess speed. I
2 can't --
3 Q. Well, you also said that it was your
4 determination that Morris was -- Morris'
5 vehicle was traveling at a legal speed.
6 A. Which would mean 70 or below. That was the
7 information that I was given from the
8 preliminary calculations, and that's as far
9 as I can go with it for now. I mean, I can
10 sit down and do some more calculations if
11 you'd like me to. But I haven't done them,
12 and so I just --
13 Q. Did you do -- Did you do any
14 calculations -- you or anyone on your
15 behalf do any calculations to determine the
16 speed of the Kenworth vehicle at the
17 instant of rollover?
18 A. No.
19 Q. Do you -- Did you or anyone on your behalf
20 do any calculations to determine how far
21 the Kenworth tractor or trailer moved or
22 slid after the instant of rollover?
23 A. I don't see indications of the start of the

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1 slide on the site map. I'm not aware at
 2 this point that that's been done. And,
 3 again, there may be site photos that would
 4 give us information on that. I don't know
 5 sitting here today.
 6 Q. Sitting here today you cannot state how far
 7 the Kenworth vehicle, either the tractor or
 8 the trailer, slid on -- after the rollover
 9 to its final rest --
 10 A. That's --
 11 Q. -- before impact with the Peterbilt?
 12 A. Yes. That's what I just said.
 13 Q. That's correct?
 14 A. Yeah.
 15 Q. One comment I think you made -- And I don't
 16 know if this is -- I can't remember exactly
 17 which report it's in, but the comment was
 18 made, I think, by you in a report -- in one
 19 of your reports that you and your -- and
 20 Mr., I guess -- Was there anybody involved
 21 besides Messerschmidt or Johnson?
 22 A. No.
 23 Q. And the report, I think, was made that

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1 neither you nor anyone on your behalf could
 2 determine the precise location of the
 3 Kenworth relative to the roadway after the
 4 overturn and before the collision by the
 5 Peterbilt. Is that correct?
 6 A. I believe that's right.
 7 Q. All right. So -- And this may be saying
 8 the same thing. You do not know the exact
 9 location sitting here today of the Kenworth
 10 vehicle when it was impacted by the
 11 Peterbilt?
 12 A. That's correct.
 13 Q. Is it true -- And I heard you say this
 14 earlier. And I'm assuming -- Which I know
 15 it's bad to do, but you will correct me if
 16 I'm wrong. I'm assuming that the speed of
 17 the Peterbilt -- Now, I'm going to the
 18 Peterbilt that was driven by my client,
 19 Mr. Thompson. You're using his speed
 20 before any braking or slowing or impact at
 21 70 miles per hour based on what you
 22 understand to be his statement of his speed
 23 coming along I-85; correct?

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1 A. Right.
 2 Q. And that -- And I know you're not a law
 3 enforcement officer, but that would
 4 constitute what you earlier characterized
 5 as a legal speed?
 6 A. Yes.
 7 Q. You don't have any -- Do you have any
 8 evidence whatsoever to support any opinion
 9 that the Peterbilt was traveling in excess
 10 of 70 miles per hour?
 11 A. No.
 12 Q. Have you as part of your work had an
 13 opportunity to review the affidavits filed
 14 by -- that we filed by Mr. Thompson and
 15 Mr. Tidwell?
 16 A. I believe I saw Mr. Johnson's yesterday.
 17 I'm not sure I saw Mr. Tidwell's. I guess
 18 I believe I did. I think he's the one that
 19 said 65 to 70.
 20 Q. Do you have --
 21 A. Mr. Thompson said 70.
 22 Q. Do you have any information or was there
 23 anything stated in either one of those

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1 affidavits that you disagree with or have
 2 any physical evidence to prove is incorrect
 3 or inconsistent?
 4 A. The speeds?
 5 Q. Anything they stated in their affidavits.
 6 A. No. No.
 7 MR. PENICK: Let me object to the
 8 form of the question. The
 9 question is too broad for him
 10 to respond to anything he said
 11 in the affidavit. I ask that
 12 the question be more specific
 13 as to what part of the
 14 affidavit that you're asking
 15 about.
 16 Q. Was there anything that you read in the
 17 affidavit that you took exception to, in
 18 either Mr. Thompson's or Mr. Tidwell's
 19 affidavits?
 20 MR. PENICK: Let me object to the
 21 form of the question until
 22 he's shown the affidavits. He
 23 doesn't have a photographic

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1 memory to remember everything
2 that they said in their
3 affidavits.
4 Q. Do you remember anything that you took
5 exception to?
6 You read them yesterday?
7 A. Yeah.
8 No, I don't remember anything that I
9 think is misstated or wrong. There may or
10 may not be. He could have been going more
11 than 70. He could have been going 65. But
12 I think Mr. Thompson himself said that he
13 was outrunning his lights, because he said
14 I couldn't see the truck in time to stop.
15 And if you're driving too fast for the
16 range of your lights, regardless of what's
17 in the road, you're outrunning your lights.
18 Q. Are you an --
19 A. He made that statement.
20 Q. Are you an expert on the range of
21 headlights from a Peterbilt?
22 A. No.
23 Q. Have you done any investigation, research

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1 in this case to determine the range of the
2 headlights on the Peterbilt?
3 A. No. But he said he was outrunning them.
4 Q. Where in his affidavit did he say -- You're
5 talking about his statement that he could
6 not see the truck in time to avoid the
7 collision. You've interpreted that to mean
8 he's saying he was, quote, outrunning his
9 lights?
10 A. Right.
11 Q. Have you done -- In this case, have you
12 done any work to determine at what distance
13 away from the Kenworth vehicle that vehicle
14 would have been visible to an oncoming
15 driver of --
16 A. No.
17 Q. -- a Peterbilt truck?
18 A. No, not -- not for a driver of a Peterbilt
19 nor for this specific overturned truck
20 case.
21 Q. It's your opinion -- Is it your opinion
22 today that any person who fails to avoid
23 hitting an object in the highway at night

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1 is outrunning their lights?
2 A. For a stationary object in the highway in
3 front of them, yes, I would say they are.
4 Q. Is there anybody else that shares that
5 opinion?
6 A. Not based on the way they drive. But the
7 statements in the literature, Paul Olson's
8 book, for example, the Alabama statute all
9 say that you have your vehicle under
10 control so that you can avoid or stop for
11 objects within the range of your lights.
12 Q. Have you ever testified in any other cases
13 to the contrary?
14 A. I don't recall. I know that we talked
15 earlier about a truck case with a man who
16 was wearing dark clothing. But he stepped
17 out in front of the truck as I recall, so
18 it wasn't a matter of something that was in
19 the road and there as a stationary object.
20 Q. Are you aware of any studies or tests done
21 by anyone with facts similar to this case
22 to determine the perception-reaction and
23 avoidability of an accident of this type?

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1 A. I'm not familiar with specific pieces of
2 data in the literature. I'm sure that
3 Muttart's Drive 3 has some data with some
4 similarity to this. Since there are
5 hundreds of data points in his research, if
6 not thousands -- I think it's in the
7 thousands. No, I don't -- I don't know
8 that somebody has put an upside down truck
9 or an overturned truck on a test strip and
10 tried to look for perception-reaction on an
11 overturned truck.
12 Q. When were you first contacted in this case?
13 A. In September '04. September 22, '04.
14 Q. By whom?
15 A. By Attorney Ed Robinson in Louisiana.
16 Q. What was said during that initial contact?
17 A. I can't give you a verbatim. He -- We
18 discussed back and forth. He gave me
19 general information.
20 Q. What information did he give you?
21 A. Well, that the name of the client/driver
22 was Vernell Morris, that the defendant
23 company was Florida Transformer, that his

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1 name was Edward A. Robinson, that it was a
2 plaintiff's civil case, the location of the
3 litigation would be in Macon County, the
4 incident happened on I-85, the two pieces
5 of equipment involved were tractor-trailer
6 rigs and that the accident report named
7 Trooper Huntley as an investigating
8 officer, that Mr. Robinson's phone number
9 was this and his cell number was this and
10 his fax was the other and his second office
11 was another number. I can give you those
12 numbers if you want them. His mailing
13 address, 600 North Foster Drive, Baton
14 Rouge, Louisiana 70806.

15 Q. What did he ask you to do?

16 A. To -- The most specific assignment, he just
17 asked me to look at the case and get back
18 with him and see what -- what could we find
19 out.

20 Q. What did you do next?

21 A. Well, the next thing that we did that was
22 billable time -- I know I probably shuffled
23 some things around looking up some material

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1 like -- Well, we told him what we needed in
2 terms of materials and waited on accident
3 reports and so forth. Made arrangements
4 for the mapping team to go down and map the
5 site, locate the truck and find out when we
6 could go see it.

7 Q. Kenworth?

8 A. Mr. Morris' truck, the remains of it. And
9 that was the first thing that -- The first
10 billable time entry is the one I told you
11 about before is on October 7, '04, that
12 Mr. Messerschmidt went down to Kerns Truck
13 Parts and examined the remains of the
14 tractor, the cab of the tractor. The next
15 thing was a phone conference with Attorney
16 Robinson. We --

17 Q. When was that? This was your second?

18 A. Yeah. This was February 4, '05. We --

19 Q. Okay. Hold on. Hold on. Let me slow you
20 down just a second there. You had -- After
21 the September 22, '04 conversation, the
22 next recorded entry is October the what?

23 A. February 4, '05.

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1 Q. Well, no. But after your first
2 conversation with Robinson, then you --
3 somebody --

4 A. The site inspect -- The vehicle inspection
5 was October 7, '04.

6 Q. That's the vehicle inspection?

7 A. Right.

8 Q. That's not the site inspection?

9 A. Right.

10 Q. All right. And after the vehicle
11 inspection of October 7, '04, your next
12 recorded entry is a phone conversation on
13 February 4, '05?

14 A. Plus obtaining site photos from
15 Photographic Services of Alabama DOT.
16 Actually, we got proof sheets to pick the
17 photos we wanted.

18 Q. Those are expensive, aren't they?

19 A. Yeah.

20 Q. The February 4th conversation with
21 Mr. Robinson, what was the substance of
22 that conversation?

23 A. I don't take notes on the phone

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1 conversations unless there's specific
2 things he wants. And in this case, he
3 requests copies of the -- requested copies
4 of the site photos. And we agreed to get
5 them.

6 Q. All right. Up to February 4, 2005, neither
7 you nor anyone on your behalf had been to
8 the site?

9 A. That's correct.

10 Q. When was the first site visit by any of
11 your people?

12 A. On February 23, '05, the photographs that
13 we furnished you were taken and the map of
14 the site was made or the data was taken
15 with a total station.

16 Q. The only -- You did not attend the site
17 inspection?

18 A. Neither the site nor the truck cab
19 inspection.

20 Q. The truck cab inspection was attended by
21 Messerschmidt and Johnson?

22 A. No. Just Messerschmidt. And there was
23 someone there named Don Glenn. And I don't

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1 belt.
 2 Q. Are you aware of any studies that have been
 3 done to determine injuries received from
 4 seat belts?
 5 A. No.
 6 Q. You're not testifying today either way as
 7 to whether or not the fatal injuries to
 8 Mr. Morris were caused by the seat belt?
 9 A. I don't know. It's certainly possible in
 10 the kind of impact that he got that just
 11 the inertia forces and the weight of his
 12 body could have done significant damage
 13 like breaking bones.
 14 Q. Have you ever worked in a case for either
 15 side where there was a fatality in a
 16 rollover?
 17 A. I'm sure I have. I can't put my finger on
 18 one right now. But, yeah, it's not
 19 uncommon for fatalities in rollovers with
 20 cars.
 21 Q. Well, you're not ruling out the fact that
 22 Mr. Morris could have been fatally injured
 23 during the rollover in this case?

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1 A. In my own mind, yes. Because the nature of
 2 the injuries is not such that would be on
 3 the left side of his body. I mean, he
 4 would have bilateral injuries. And that's
 5 not going to happen when he -- from that
 6 rollover.
 7 Q. But you don't know what injuries caused his
 8 death?
 9 A. I haven't -- All I've done is look at the
 10 autopsy report. I haven't tried to make
 11 any determination beyond that.
 12 Q. And it would be fair to say that Mr. Morris
 13 could have received fatal injuries in this
 14 case during the rollover?
 15 A. I don't believe that. Because he's belted
 16 in, and I don't believe he would have
 17 ejected from the simple rollover with his
 18 seat belt on.
 19 Q. We don't know -- You don't know -- Because
 20 you're not a medical expert, you don't know
 21 whether or not he received fatal injuries
 22 before ejection, do you?
 23 A. Well, I don't think a medical expert could

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1 necessarily tell you that. He could tell
 2 you what the -- what injuries were
 3 associated with the fatality. But I don't
 4 think you've got the kinds of forces
 5 involved with the rollover by a factor of
 6 ten or 100 to cause the kind of injuries
 7 that you can get from these impacts.
 8 Q. But that -- that -- And I understand -- I
 9 understand you want to give your personal
 10 opinion, observation that you think it was
 11 more like -- that you think it was more
 12 likely in your personal opinion that the
 13 impact forces or that injuries received
 14 after the impact with the Peterbilt could
 15 have caused Mr. Morris' death. But what
 16 I'm getting at is you don't have a
 17 professional opinion because you're not a
 18 medical -- you're not a medical expert,
 19 you're not a biomechanical expert, you
 20 haven't determined what specific injuries
 21 were caused by what specific objects or
 22 forces in this case, so you can't give an
 23 opinion to any degree of reasonable medical

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1 certainty as to what caused Mr. Morris'
 2 death in this case?
 3 A. No, I can't give a medical opinion or a
 4 biomedical (sic) engineering opinion. I'm
 5 just basing it on experience looking at
 6 other vehicle wrecks over the last 40 years
 7 as to what kind of forces won't cause what
 8 kind of injuries.
 9 Q. But you do agree that people have been
 10 fatally injured in rollover accidents?
 11 A. They have.
 12 Q. The next comment on Defendant's Exhibit 2
 13 says no evidence the belt was slash
 14 something?
 15 A. Was not worn.
 16 Q. No evidence the belt was not worn except
 17 the belt locked fully.
 18 A. Uh-huh (positive response). In extended
 19 position.
 20 Q. What does that mean?
 21 A. Well, belt locked fully extended.
 22 Q. Belt locked fully extended.
 23 A. Right.

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1 in trailers, and I've seen evidence to
 2 indicate that some materials are weakened
 3 by extended exposure to sunlight and the
 4 extensive strength deteriorates. It's
 5 pretty rare to see a broken seat belt. In
 6 fact, it's not common to see them
 7 stretched. The forces that we see in -- a
 8 lot of accidents in the 30, 40, 50 mile an
 9 hour range, there's not enough forces to
 10 stretch seat belts --
 11 Q. You've done -- I'm sorry. Go ahead.
 12 A. -- in automobiles that I've seen more of
 13 than trucks.
 14 Q. You've not done any testing on this belt to
 15 determine what forces on this belt and --
 16 you know, in its condition at about the
 17 time of this accident would cause a pucker?
 18 A. No.
 19 Q. You've not done any testing or examination
 20 of this belt to see if there were any
 21 manufactured defects or glitches in it that
 22 could have caused stretching or puckering
 23 with less force than you're usually

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1 familiar with?
 2 A. I haven't looked for it, because I've never
 3 seen a pucker like that that wasn't caused
 4 by an excessive force on the belt from
 5 either a wreck or from laboratory-induced
 6 stretching.
 7 Q. How many puckers have you seen from wrecks,
 8 from actual wrecks?
 9 A. Probably a few dozen.
 10 Q. How many puckers have you seen from
 11 eighteen-wheeler accidents?
 12 A. I can't separate in my own mind what would
 13 be cars and what would be
 14 eighteen-wheelers.
 15 Q. Most of your experience has been cars?
 16 A. There are more cars than trucks, but over
 17 40 years there have been a lot of trucks.
 18 Q. How many times have you seen a pucker in a
 19 seat belt after an accident of this type
 20 where you had an impact due to rollover and
 21 then a subsequent impact from another
 22 vehicle?
 23 A. I've never seen that kind of accident

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1 before.
 2 Q. So you've never seen a pucker from this
 3 kind of an accident before?
 4 A. That's right.
 5 Q. Did anyone from your office ever actually
 6 weigh the -- any portion of the Kenworth
 7 vehicle?
 8 A. No.
 9 Q. On Defendant's Exhibit 2, there's some --
 10 up in the top right-hand corner, there is a
 11 statement, chassis weighed 16,290. What is
 12 that measurement in?
 13 A. It would be in pounds. And I don't know if
 14 that's a gross vehicle weight rating or if
 15 that's an actual cab weight. That's about
 16 right for the tractor weight of that sort
 17 of vehicle.
 18 Q. What does --
 19 A. Usually --
 20 Q. I'm sorry.
 21 A. Usually, they stamp gross vehicle weight
 22 rating on these things. They don't give
 23 you the actual weight. Model number, I

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1 don't know what that means. Just model
 2 T600 on a label that's on the remaining
 3 part of the cab. Chassis number, some
 4 number on a label that's stamped there.
 5 There's your -- Your gross vehicle weight
 6 rating is 48,000 pounds.
 7 Q. For what?
 8 A. It has to be the cab -- the tractor because
 9 the trailer is not there.
 10 Q. Did you or Messerschmidt or Johnson ever
 11 get any size, length or weight information
 12 on the trailer that the Kenworth was
 13 pulling?
 14 A. Weight information. The accident report
 15 said that he had 22 containers of titanium
 16 dioxide that weighed 2,000 pounds each, so
 17 he had a 44,000 pound load. Other than
 18 that, I -- Usual trailer weight with
 19 tractor weight is going to run between 25
 20 and 30,000 pounds. So he was somewhere
 21 from, say, 77,000 pounds down to maybe 72,
 22 maybe another thousand or so down in gross
 23 weight of the whole vehicle.

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- 1 Q. Did you use any information -- any weight,
2 length, size or measurements of the
3 Kenworth tractor or trailer in any
4 calculations to support any of your
5 opinions?
6 A. Qualitatively just to understand that the
7 other truck was also loaded and that the
8 two trucks involved would have comparable
9 weights as opposed to a car and a truck
10 where your weight disparity is 15 or 20 to
11 one.
12 Q. But you didn't do any -- you didn't do any
13 speed calculations in the case?
14 A. That's right.
15 Q. And Messerschmidt didn't do any speed
16 calculations?
17 A. Well, none that was written down, no.
18 Q. What does -- On Defendant's Exhibit 3,
19 which is dated 10/7/04 at the top -- And
20 this is part of Messerschmidt's notes at
21 the time of his inspection; right?
22 A. Yes.
23 Q. At the top it says -- the first line talks

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- 1 about Don Glenn. I understand that. And
2 the inspection was at Kerns Truck Stop or
3 Truck Parts; right?
4 A. Right.
5 Q. And then it says, motor gone. Do you see
6 that?
7 A. Right.
8 Q. Frame gone and cut up; right?
9 A. Right.
10 Q. Only cab left to inspect; right?
11 A. Right.
12 Q. And we've already discussed that. The next
13 thing says, P slash S door and seat removed
14 by Bill of KTP. What does that mean?
15 A. Passenger's side door and seat was removed
16 by Bill of Kerns Truck Parts.
17 Q. That's talking about the passenger's side
18 seat was removed?
19 A. Right.
20 Q. Do we know if there was any damage to the
21 passenger's side seat in the Kenworth?
22 A. None was mentioned. I don't know.
23 Q. Do we know if the passenger's side seat was

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- 1 knocked forward and up?
2 A. I don't know that.
3 Q. Would that be of any use in your analysis?
4 A. Not that I can think of at this point.
5 Q. Do we know if the passenger's side -- Would
6 there have been -- Was there a lap
7 belt/shoulder harness seat belt on the
8 passenger's side?
9 A. I don't know. I would assume there would
10 be because it's required.
11 Q. Do you know if there were any stretch,
12 scrape or pucker marks in the passenger's
13 side seat belt?
14 A. I would be very surprised if there was,
15 because my understanding was there wasn't a
16 passenger in the vehicle.
17 Q. But y'all didn't -- you didn't inspect
18 that?
19 A. They probably -- He probably took a look at
20 it, but there's no photographs, no records
21 of it.
22 Q. No information in here as to whether or not
23 the passenger's side seat belt had any

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- 1 pucker or stretch?
2 A. I think he would have certainly noted that,
3 because that would have indicated some
4 loading on that belt. And that would have
5 given a very big question as to who was in
6 the truck with him and where did they go.
7 Q. You don't know if he even inspected the
8 passenger's side seat belt?
9 A. You're asking me things like do I know did
10 he brush his teeth before he left that
11 morning. If he had seen something that was
12 noteworthy on that seat belt, he would have
13 recorded it or at least reported it
14 verbally to me, and nothing was ever said
15 about that. When you look at a car or when
16 you inspect a vehicle, you look at many
17 things that you don't record, things that
18 are unremarkable. You just don't record
19 them. You record the unusual data or the
20 things that may be useful in potential
21 calculations such as weights or things like
22 that.
23 Q. Do you know when the chassis and motor were

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1 understand. I know we spent some time on
2 the seat belt and the buckle and the reel
3 or the locking mechanism and the fabric.
4 Is there anything else about the driver's
5 seat belt system on this Kenworth truck
6 other than what we've already discussed
7 that is evidence to you that the seat belt
8 was or was not in use during this accident
9 sequence?
10 A. Any evidence on the truck?
11 Q. No. On the seat belt or the --
12 A. Oh, the seat belt.
13 Q. -- seat belt mechanism or the buckle or the
14 reel that we haven't already discussed that
15 was -- supports evidence that it -- that
16 this particular belt was either in use or
17 not in use at the time of the accident?
18 A. I can't remember anything else. It seems
19 to me we covered everything several times.
20 Q. And where -- Do you have an understanding
21 as to where Mr. Morris was when everything
22 came to a rest after -- you know, after the
23 whole entire accident sequence?

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1 A. I don't right now. I suppose somebody
2 indicated that somewhere along the line,
3 but I don't know.
4 Q. Was he still in the driver's seat of the
5 cab?
6 A. My recollection is he was not.
7 Q. Did you or Messerschmidt or Johnson form
8 any kind of conclusions, opinions or
9 observations as to why he was not or how he
10 got from the seat to where he was when
11 everything came to rest?
12 A. Got hit about 70 miles an hour with a
13 40-ton truck.
14 Q. Sitting here today, you don't know what the
15 impact speed of the Peterbilt was; correct?
16 A. Not to within two or three miles an hour,
17 no. I'm just using the testimony of your
18 truck driver.
19 Q. The maximum speed of the impact would have
20 been 70 miles per hour if there was no
21 braking or deceleration of any type prior
22 to impact?
23 A. Right. Well, that's what I've assumed from

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1 his testimony.
2 Q. And you've done no calculation -- You've
3 done no calculation -- calculations to
4 determine the Delta-V or impact speed of
5 the Peterbilt?
6 A. There's no way from the damage pattern to
7 do it. There's no such things as stiffness
8 coefficients for crashes on trucks. The
9 only calculation that I could do on that is
10 to know that in the vicinity of ten percent
11 of speed is lost between emergency brake
12 application and the start of brake skid
13 marks, visible skid marks. And assuming
14 that he did maximum braking and there were
15 no skid marks left, then I would assume
16 that he wouldn't be below the lower 60s at
17 impact.
18 Q. You never saw any -- or you did not --
19 Neither you nor Messerschmidt nor Johnson
20 inspected the chassis of the Kenworth
21 tractor or the trailer that it was pulling;
22 correct?
23 A. Yeah. A number of times we've said that

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1 all was left was the cab.
2 Q. You don't -- Sitting here today, you don't
3 have an opinion or any information as to
4 the points of impact between the Peterbilt
5 and the Kenworth?
6 A. All we know is somewhere in the bottom of
7 the cab.
8 Q. Why do you know that?
9 A. Because the floorboard is buckled up.
10 Q. Of what floorboard?
11 A. Of the Kenworth tractor.
12 Q. The part of the cab that Messerschmidt
13 inspected --
14 A. Yes.
15 Q. -- shows some -- the floorboard? What part
16 of the floorboard?
17 A. I didn't -- All I can do is see the same
18 things that are in the pictures. I didn't
19 see the cab itself, but ...
20 Q. Were there any measurements taken as --
21 from back to forth -- back to front or side
22 to side to -- as to where that buckling was
23 in the floorboard?

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1 A. No. Not that I'm aware of. You have
2 measurements in the field notes section.
3 Q. Did you or Messerschmidt or Johnson inspect
4 the Peterbilt?
5 A. As I've mentioned several times before, it
6 was never made available to us. We did not
7 see that.
8 Q. What do you mean?
9 A. Neither the Peterbilt nor the tractor nor
10 the trailer nor the trailer of the
11 Kenworth.
12 Q. When you say it was never made available,
13 did you ask to inspect the Peterbilt or the
14 trailer that it was pulling?
15 A. I'm sure we did. I don't have a written
16 note of it, but it's routine to ask to look
17 at all of the vehicles involved in an
18 accident.
19 Q. Who did you ask?
20 A. It would have been Attorney Robinson.
21 Q. Did anyone from -- Did you understand that
22 Mr. Morris' employer at the time of this
23 accident was Panther Trucking. What's

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1 the -- Do you know the full name of
2 Panther? Do you? I mean, do you know who
3 his employer was?
4 A. I've seen the word "Panther Trucking", but
5 that's all I know about it.
6 Q. Did --
7 A. Panther II Transportation, Incorporated.
8 That's all I know. It's on the accident
9 report.
10 Q. Did you ever speak to anyone with Panther
11 or anyone associated with their insurance
12 carrier?
13 A. No.
14 Q. Did Mr. -- Did Attorney Robinson ever speak
15 to you about Panther or anybody associated
16 with their insurance carrier?
17 A. No.
18 Q. Do you know who paid the -- for the
19 property damage to the Kenworth and the
20 Kenworth trailer?
21 A. I don't know.
22 Q. Have you spoken with anyone during your
23 investigation of this case who suggested to

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1 you that the accident was not caused by any
2 conduct of my driver, Mr. Thompson?
3 MR. PENICK: Let me object to the
4 form of the question. Could
5 you rephrase that?
6 A. I don't remember anybody suggesting that or
7 saying that.
8 Q. Have you spoken with anyone during your
9 work on this case who suggested that this
10 accident was caused by Mr. Morris in the --
11 in the operation of his vehicle?
12 A. No. The only people I've talked to about
13 this case is Attorney Robinson,
14 Mr. Messerschmidt, Mr. Johnson and
15 Mr. Penick. I haven't spoken to anyone
16 else about the case.
17 Q. Were you asked to offer an opinion as to
18 whether or not Mr. Morris' conduct and the
19 manner in which he operated his vehicle
20 contributed at all to causing this
21 accident?
22 A. No.
23 Q. Were you asked to offer an opinion as to

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1 whether Mr. Thompson, my client's conduct
2 contributed to causing this accident?
3 A. Yes.
4 Q. But you weren't asked to evaluate whether
5 Mr. Morris' conduct contributed to causing
6 this accident?
7 A. That was the previous question.
8 Q. Right.
9 A. Yeah. That's -- Same answer.
10 Q. So you don't have an opinion as to whether
11 Mr. Morris' conduct contributed to causing
12 this accident?
13 MR. PENICK: Object to the form of
14 the question.
15 A. I haven't considered it.
16 Q. What is -- In Defendant's Exhibit 5, what
17 is this calculation that we're looking at?
18 A. There is the calculation of stopping
19 distances for different drag factors for a
20 vehicle going 70 miles an hour. And it's
21 calculated -- Well, the first thing I did
22 was just start off with conservation of
23 energy and get the speed and distance

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1 equations relating to speed distance,
2 coefficient of friction and gravitational
3 constant and looked at the stopping
4 distance for different drag factors; .4, .5
5 and .6.

6 The trucks that I have done
7 instrumented skid tests in that had
8 properly adjusted brakes were usually about
9 .6 for their drag factor. And using that
10 value, I made another calculation on the
11 following sheet. If we assume that the
12 perception-reaction time of Mr. Thompson is
13 two seconds in this instance and that his
14 lights will illuminate something 350 feet
15 down the road on high beam, then that says
16 that from the time he can see it and
17 perceive it and react that he's traveled
18 205 feet or he has about a 144.7 feet more
19 to go before impact.

20 So if we'd start him off at 70 miles an
21 hour and decelerate him at .6 G for a 144
22 feet -- 144.7 feet, what's his final
23 speed. And it turns out to be about 23.8,

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1 24 miles an hour. The damage to the
2 vehicle is to the -- to the Morrison (sic)
3 vehicle is very much inconsistent with that
4 kind of collision speed.

5 Q. On Defendant's Exhibit 5, this is stopping
6 distance from what point to what point --

7 A. Brake application to stop.

8 Q. -- and time?

9 And with what weight?

10 A. Doesn't matter about the weight. It's
11 independent of the weight.

12 Q. Why is that?

13 A. Because the frictional force is equal to
14 the weight times the coefficient of
15 friction, and so the weight cancels out.
16 If you look up in that top line, there's an
17 equation that says the one half mv squared,
18 which is the initial kinetic energy, is
19 equal to mg mu X. Mg is the mass times the
20 gravitational constant which would be the
21 weight. So it's the weight times the
22 coefficient of friction times the distance
23 to stop. Well, the mass cancels out of

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1 that equation on both sides. And then I
2 just solve for V for final speed. Well,
3 that's not what I want. I really want
4 stopping distance, so I solve for the
5 stopping distance. And that turns out to
6 be V squared over 2 G mu. Where mu is the
7 drag factor or coefficient of friction of
8 friction for locked tires.

9 So the 70 miles an hour -- of course,
10 that's to be converted to feet per seconds.
11 102 and two-thirds feet per second divided
12 by two G times mu and then plug mu in as
13 .4, .5 and .6 and get the stopping
14 distances from brake application to stop.

15 Q. And for the comparison here or for your
16 purposes, you chose the drag factor that
17 gave you the shortest stopping distance?

18 A. No, I didn't. I chose the drag factor that
19 I have measured personally in instrumented
20 trucks in emergency brake application.

21 Q. When did you measure the drag factor on
22 I-85 in the vicinity of this accident?

23 A. I didn't.

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1 Q. You did not?

2 A. No.

3 Q. Did Messerschmidt or Johnson ever measure a
4 drag factor at the site of this accident?

5 A. No.

6 Q. Do you know that the drag factors change
7 depending upon the highway condition and
8 the surface?

9 A. Yes, sir. I've written an essay paper on
10 it a few years ago.

11 Q. What's the name of that paper?

12 A. Well, let's see. What's the exact title?
13 Let me see the CV there.

14 Analysis of Accelerometer Data for Use
15 in Skid-Stop Calculations. And it's SAE
16 paper number 949108. It was incorporated
17 in the book called Accident
18 Reconstruction: Technology and Animation
19 IV.

20 Q. What page are you on on that resume? I
21 want to make sure I'm --

22 A. Page four.

23 Q. Page four. All right. Give it to me

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1 Q. Is it your opinion that the load -- the
2 amount of load or the weight that the
3 Peterbilt and trailer were hauling at the
4 time of this accident has no effect on the
5 stopping distance?
6 A. If the brakes are properly adjusted and you
7 can get maximum braking, no, it wouldn't.
8 If the brakes are not fully adjusted, yes,
9 it would.
10 Q. And if the -- if you used -- Well, let me
11 ask you this. Maybe I didn't understand
12 it. How does the stopping distance
13 calculated on Defendant's Exhibit 5 fit
14 into the equation on Defendant's Exhibit 6?
15 A. Well, I'm saying that -- It doesn't
16 really. It just says that that stopping
17 distance is less than the -- less than the
18 distance to impact the truck, that the
19 distance I've subtracted off over here is
20 the distance that you actually travel in
21 his perception-reaction time with no
22 braking for 205 feet. I'm just looking
23 here to see if we had wet, slick pavement

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1 and slick tires or very mild-adjusted
2 brakes and we had coefficient of friction
3 of .4. Even if he had put on his brakes at
4 350 feet away, he couldn't have avoided the
5 collision. He could have only slowed
6 down.
7 If we had had a .5 and he can see 350
8 feet and he put on his brakes at 350 feet,
9 he could have stopped. But he's got to
10 have time to respond to perceive and to
11 react. And so really this -- this is
12 independent of that. It's just that I'm
13 seeing what are the stopping distances for
14 coefficient of friction. Over here I'm
15 looking and saying, okay, if he can see 350
16 feet ahead of him and he sees the truck,
17 then he's got to realize that that presents
18 a hazard and move his foot from the
19 accelerator to the brake and that takes him
20 two seconds, then he's traveled 144 feet.
21 So he then has the remainder of -- I'm
22 sorry. He's traveled 205 feet. So that
23 leaves him another 144.7 feet for braking.

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1 Well, he's still going to hit the truck,
2 but he's going to be going slower when he
3 hits the truck. If he brakes for 144.7
4 feet and he starts off braking at 70 miles
5 an hour, then he's going to be going in the
6 low 20s when he impacts.
7 Q. By your calculations -- If I'm
8 understanding you correctly, by your
9 calculations in Defendant's Exhibit 5 and
10 Defendant's Exhibit 6 assuming optimum
11 conditions of braking efficiency and
12 perception-reaction, the Peterbilt is still
13 going to hit the Kenworth at 23 miles an
14 hour?
15 A. Right. If he doesn't steer off the main
16 part of the road onto the shoulder.
17 Q. Right. So there's no way to avoid --
18 There's no way that Mr. Thompson could have
19 avoided this collision?
20 MR. PENICK: Object to the form of
21 the question.
22 Q. Correct?
23 A. No. That's incorrect. One, at that speed

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1 he should have been able to steer off.
2 And, two, if the coefficient -- If the
3 braking efficiency is a little higher or he
4 reacts a little faster, he can still manage
5 to stop in time to not hit the truck.
6 Q. How's he going to do that? Show me -- Show
7 me your calculation where he avoids --
8 where he's able to stop?
9 No. The one you've already done.
10 A. Oh, it's not in there.
11 Q. You haven't done a calculation?
12 A. I told you I had done a number of
13 calculations and that this was one example
14 of the calculations. And if you want me to
15 do a calculation to see what would be
16 involved if he stops, I can do this. It's
17 not on this page right here.
18 Q. Have you done a calculation using -- What
19 would his speed be -- What would the speed
20 at impact be if you used the .5 drag factor
21 on Defendant's Exhibit 5?
22 A. Do you want me to calculate it?
23 Q. Please.

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1 A. Okay.

2 I think I've got an error in that
3 calculation. It's higher speed than that.
4 It's 48 miles an hour at .6 for 144.7. For
5 .5, it would be 52.

6 Q. And what about for .6 -- I mean for .4?

7 A. Well, that's not an applicable case on
8 rainy slick tires and so forth. But if you
9 use a .4 times -- It would be 56.

10 Q. So it -- At best using your calculation
11 with a .6 drag factor, the Peterbilt would
12 have still hit the Kenworth at 48 miles an
13 hour?

14 MR. PENICK: Object to the form of
15 the question. He said it
16 would be traveling at that
17 speed when he got to the
18 Kenworth, not that it would
19 hit the Kenworth.

20 THE WITNESS: Right.

21 Q. But it still impacts at 48 miles an hour?

22 MR. PENICK: Object to the form of
23 the question. He didn't say

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1 that.

2 A. If he doesn't steer away. Certainly if
3 he --

4 Q. Where -- All right. Where would you have
5 suggested with a couple seconds of
6 perception-reaction time at 3 a.m. in the
7 morning on September 2, 2004 -- where would
8 you have suggested Mr. Thompson steer his
9 vehicle to avoid this accident?

10 A. Onto the shoulder.

11 Q. Which way, right or left?

12 A. Right.

13 Q. And how --

14 A. Because the trailer is on the left.

15 Q. And do you know what's over there on the
16 right side of that highway?

17 A. I believe we do. All I see in that
18 vicinity is a paved shoulder.

19 Q. How many seconds did it take you to find
20 that information?

21 A. I didn't time it.

22 Q. Well, I did. Would you know it took you 15
23 seconds to find out that there was a paved

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1 shoulder over there on the right side of
2 I-85?

3 MR. PENICK: I'm going to object
4 to the form of the question.

5 A. Might well have taken me two or three --
6 Well, it might have taken me an hour if I
7 had gone back to the computer and pulled
8 that file down again.

9 Q. Do you know how far the drop-off is from
10 that shoulder down to the bottom of the
11 ravine over on that side of the road?

12 MR. PENICK: Objection to the
13 assumption that there's a
14 ravine on that side of the
15 road.

16 A. I don't see one.

17 Q. It's your testimony that there's no
18 drop-off --

19 A. No, I'm not.

20 Q. -- on that side of the road?

21 A. I'm saying I don't see a ravine in that
22 area of the road in the aerial photograph.

23 Q. But that's going to be your testimony to

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1 the jury, that with the time and the
2 situation facing Mr. Thompson he should
3 have driven his eighteen-wheeler with
4 transformers on the back of it off the side
5 of that highway?

6 A. Onto the shoulder, yeah.

7 Q. Did you -- Have you given that opinion
8 before today?

9 A. No. Nobody has asked me where would he
10 steer before today.

11 Q. If he's trying to stop his vehicle in the
12 highway, the best he can do according to
13 your calculations is hit that Kenworth at
14 48 miles an hour; correct?

15 MR. PENICK: Objection to the form
16 of the question.

17 A. No, that's not correct. As we've said,
18 these are -- this is one example of the
19 calculations. If he had responded quicker
20 or if he could see further, then that speed
21 would be lower.

22 Q. The -- And the speed is higher at a .4 drag
23 factor. And what's the maximum speed that

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1 would be imprudent not to have them on the
 2 high beam.
 3 Q. Do you know if Mr. Thompson was meeting
 4 traffic coming from the opposite direction
 5 at or about the time of this accident?
 6 A. If he had, he would have seen the truck
 7 outlined in front of him.
 8 Q. How do you know that?
 9 A. Because if there's a car coming to meet him
 10 and the truck is across the road and he's
 11 here, he's going to see that truck
 12 outlined.
 13 Q. How do you know where the truck was in
 14 relationship to the oncoming -- to any
 15 oncoming traffic?
 16 A. Well, I don't know where --
 17 Q. You're just speculating; right?
 18 A. I don't know --
 19 MR. PENICK: I object to the
 20 question. Because the
 21 question speculates that
 22 oncoming traffic was coming.
 23 MR. BROUGHTON: Well, aren't we

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1 all speculating.
 2 Q. You have no idea --
 3 MR. PENICK: But you can't object
 4 to him speculating if the
 5 question is speculating.
 6 Q. Let me ask you this. Did you or
 7 Mr. Messerschmidt make any tests or
 8 examinations of the -- any of the bulbs in
 9 the headlights of the Peterbilt to
 10 determine if the high beams or the low
 11 beams were illuminated at the time of this
 12 accident?
 13 A. The headlights didn't survive according to
 14 the photographs I've seen of the
 15 Peterbilt. We did not examine the
 16 Peterbilt.
 17 Q. Did you or Mr. Messerschmidt ever examine
 18 the headlights or taillights or running
 19 lights on the Kenworth to determine if any
 20 of those lights were illuminated at any
 21 point?
 22 A. None of those lights were there at the
 23 cab. There were no lights that survived

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1 the scrapping of the materials. So we
 2 haven't seen any lights of any truck.
 3 Q. I thought I saw some light bulbs in your
 4 photographs?
 5 A. I don't know where those came from. There
 6 may be some bulbs in there. Perhaps you
 7 saw some in the vicinity of the truck.
 8 MR. PENICK: The question is
 9 speaking of headlights and
 10 running lights; right?
 11 MR. BROUGHTON: Headlights,
 12 running lights or taillights.
 13 A. I see a picture of two bulbs that are
 14 coated inside with tungsten. And I see a
 15 single bulb in a container, so I suppose I
 16 misspoke when I said none of the bulbs
 17 survived.
 18 Q. Do you have any idea where those bulbs came
 19 from?
 20 A. No, I don't.
 21 Q. Did those bulbs or the examination of those
 22 bulbs have anything to do with any of your
 23 opinions in your case?

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1 A. No.
 2 Q. Did you find -- You don't have any physical
 3 evidence to verify that any of the --
 4 A. This would be the headliner bulbs, the --
 5 Q. Interior bulbs --
 6 A. Yeah.
 7 Q. -- to the cab?
 8 A. Yeah.
 9 Q. So that doesn't have anything to do with
 10 anything that could have been seen by
 11 Mr. Thompson as he approached that
 12 vehicle?
 13 A. No. And I wouldn't expect those to be on
 14 at the time of the accident. They're
 15 interior bulbs.
 16 Q. You don't have any physical evidence to
 17 establish that any of the lights,
 18 headlights, taillights, running lights,
 19 were on the Kenworth tractor or trailer
 20 at -- after the rollover and at the time
 21 Mr. Thompson approached in his vehicle?
 22 A. I don't have the bulbs. And if I had the
 23 bulbs, it wouldn't -- it wouldn't show you

Page 173

1 that they were on. Because unless the
2 impact is very near the bulb, you don't get
3 hot set.
4 Q. So you don't have any evidence to --
5 A. I don't have any evidence.
6 Q. -- to prove any of those lights were on --
7 A. No.
8 Q. -- at the time Mr. Thompson approached?
9 A. No.
10 Q. You don't have any physical evidence that
11 even had they been on -- had any of those
12 headlights, taillights, running lights on
13 the Kenworth been on that they would have
14 been visible to Mr. Thompson approaching in
15 that Peterbilt?
16 A. I don't have any physical evidence of it,
17 no.
18 Q. The running lights -- We can agree, can't
19 we, that the running lights, if any, that
20 were illuminated by bulbs or light bulbs on
21 the left side of the tractor or the trailer
22 would have been down on the ground between
23 the ground and the tractor and trailer;

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1 right?
2 A. Right.
3 Q. Those would not have been visible to
4 Mr. Thompson; correct?
5 A. Not likely.
6 Q. The -- Any running lights on the topside --
7 I mean on the right side of the tractor and
8 the trailer after it rolled over had they
9 been on would have been -- would not have
10 been visible by Mr. Thompson as he
11 approached? They would have been vertical;
12 correct?
13 A. Well, they would be up eight feet off the
14 ground. For a trailer in the usual
15 driver's eye height in a cab is about nine
16 and a half feet. So he would have been
17 on -- slightly above eye level of the
18 trailer marker lights. And the trailer end
19 that's lower in the median, he would have
20 been several -- two or three feet higher.
21 Those lights he probably could have seen.
22 Q. Have you done -- Have you done any tests or
23 studies with exemplars to determine whether

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1 that's the case, whether any of those
2 lights would have been visible on the side
3 of the Kenworth?
4 A. Yeah. If -- Those are measurement
5 distances I've done on a lot of trucks.
6 And that's a typical eye height of a driver
7 in a cab of a truck, eighteen-wheeler. And
8 eight feet is a typical width or, I don't
9 know, maybe they make some nine feet now.
10 But eight or nine feet width of the trailer
11 with the lower end of the trailer down in
12 the median, it would have been below his
13 eye height or the upper one at his eye
14 height.
15 Q. And then you did a test or a study of an
16 exemplar vehicle in this case?
17 A. No.
18 Q. You've never inspected the trailer that the
19 Kenworth was pulling at the time of the
20 accident; right?
21 A. I'm -- We've said that about 15 times. No,
22 sir, I did not inspect the trailer of the
23 Kenworth, the Peterbilt nor the Peterbilt

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1 tractor nor anything except the remaining
2 cab of the Kenworth.
3 Q. Doesn't that limit your ability to give any
4 opinions in this case, Mr. Robinson?
5 A. If you -- You are asking me about could he
6 see it. I'm telling you that the geometry
7 of his line of sight is that he could have
8 had a line of sight to those bulbs. No, if
9 he's looking somewhere else he wouldn't
10 have seen those bulbs. If he's
11 inattentive, he wouldn't have seen those
12 bulbs.
13 Q. Doesn't the fact that you have not had an
14 opportunity to inspect the Kenworth
15 tractor, chassis, trailer or the Peterbilt,
16 anything on the Peterbilt -- doesn't that
17 severely hamper your ability to render any
18 opinions in this case?
19 A. It would be more favorable if I could have
20 seen them, yes.
21 Q. I mean, this is not your typical
22 investigation and assimilation of evidence
23 to support any expert opinions in the cases

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1 you normally handle, is it?

2 MR. PENICK: Object to the form of

3 the question.

4 A. We've had remains of vehicles to examine on

5 a number of occasions before, yeah. We

6 don't have the whole vehicles. Many times

7 we don't have the adverse vehicle.

8 Q. You don't really believe that any of these

9 opinions you've written down in this case

10 are to any degree of reasonable accident

11 reconstruction certainty, do you?

12 A. Yes, I do. I wouldn't have submitted if I

13 hadn't.

14 Q. Well, you don't believe that you've done a

15 complete investigation and examination of

16 the vehicles that would be required -- or

17 any of the site or the evidence that would

18 normally be required to render any opinions

19 of that type, do you?

20 MR. PENICK: Object to the form of

21 the question.

22 A. I'm sorry.

23 MR. PENICK: It assumes facts.

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1 A. I'm sorry. I disagree with that. We have

2 examined all that was available to us to

3 examine. I did not go to the site. I did

4 not see the vehicle. It was our intention

5 that Mr. Messerschmidt would do the

6 testimony, so he went to the site and the

7 vehicle.

8 Q. So it's your normal practice even if you

9 don't have the opportunity to do the

10 investigation required to support opinions

11 to give opinions anyway?

12 A. Not at all. I think that I can support the

13 opinions that I've given. And I'm agreeing

14 that there are some things that we can't

15 say. We can't say anything about the

16 Peterbilt headlights. They're gone. But I

17 would assume that his lights were on when

18 he was going down the road or he would have

19 stopped driving.

20 Q. But you can't say whether any of the lights

21 were on that Kenworth, the tractor or the

22 trailer after the rollover, can you?

23 A. I don't have the bulbs to -- Well, no, I

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1 can't. No, I can't.

2 Q. Did you ever talk with or interview

3 directly or by telephone -- and by you I'm

4 including Mr. Messerschmidt and

5 Mr. Johnson -- either of the troopers

6 involved in investigating this accident?

7 A. I'm not aware that they did. I did not.

8 Q. Did you ever question or inquire about any

9 of the information reported on the Alabama

10 Uniform Accident Report that you reviewed

11 at part of your work in this case?

12 A. I don't recall asking any questions about

13 it, no.

14 Q. Was there anything in the Alabama Uniform

15 Accident Report that you found to be

16 inaccurate?

17 A. I don't recall anything.

18 Q. You've got in your book as something you

19 relied on your review of the -- that

20 accident report in this case, didn't you?

21 A. Yeah. There's no -- Where it happened.

22 Q. All I would like to do -- All I would like

23 to do -- And this is the copy that we have

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1 and I'm willing to use our copy. Excuse me

2 for this. I'm going mark this as

3 Exhibit --

4 MR. BROUGHTON: And, Henry, if

5 I've got -- which I know I

6 do. I'm going to ask the

7 court reporter to take off any

8 highlighting on my copy. If

9 you've got a clean copy, we

10 can use that. I mean, there

11 are just a couple of little

12 highlight marks. But I want

13 to mark this as Defendant's

14 Exhibit 8. We can use -- If

15 you've got a clean copy, could

16 we use your clean copy and get

17 you a copy back?

18 MR. PENICK: There's a copy in the

19 stack there.

20 MR. BROUGHTON: Oh, let's use

21 that. There you go.

22 MR. BRITTAIN: Just, you know,

23 make a note that this is in

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1 locate or ever inspect the switch -- the
 2 dashboard switches in the Kenworth to
 3 determine what position they were in at the
 4 time of this accident?
 5 A. The discussion I recall on that was that
 6 that wasn't given any credibility, because
 7 the cab had been handled and a lot of
 8 people had been around the cab. The switch
 9 may have been turned from off to on or off
 10 to on. And I don't recall what position if
 11 he recorded it that Messerschmidt said that
 12 the switch was in.
 13 Q. Do you know what kind of switch it was?
 14 A. A truck light switch.
 15 Q. I'm not familiar with Kenworth's, but I
 16 know I've had vehicle -- car vehicles
 17 sometimes where the light is on the -- what
 18 usually is a windshield wiper arm.
 19 Sometimes you have to pull the lights on
 20 and off. Sometimes they're automatic.
 21 Sometimes they are switches where you have
 22 to turn the lights on and off. Do you have
 23 any idea which switch was involved in this

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1 case?
 2 A. No, I don't.
 3 Q. And we don't know whether at the time of
 4 the -- that the Peterbilt was approaching
 5 that Kenworth whether that -- whether the
 6 light switch was on or off?
 7 A. No.
 8 Q. And nobody was able to test the Kenworth
 9 tractor cab after this accident to
 10 determine if any of those electrical
 11 systems were still operative after the
 12 impact?
 13 A. Well, not after the impact. They were
 14 destroyed in the impact. And, again, I
 15 think we've been over that two or three
 16 times, that nobody examined the electrical
 17 system.
 18 Q. Don't know whether it was damaged during
 19 the rollover?
 20 A. That's the same answer.
 21 Q. The -- Do -- Did Messerschmidt or you or
 22 Johnson -- I guess this could be any one of
 23 the three of you -- ever match any of the

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1 marks in the median that Messerschmidt and
 2 Johnson found on their site inspection with
 3 any of the tires or parts of the Kenworth
 4 vehicle?
 5 A. You mean specifically which tire made which
 6 mark?
 7 Q. Or which part of the vehicle made which
 8 mark.
 9 A. I don't recall that that was done.
 10 Q. And, in fact, in reality you don't know --
 11 you don't know at what point that the
 12 trailer started rolling or at what point
 13 the tractor -- Kenworth tractor started
 14 rolling over to its left side?
 15 A. No.
 16 Q. And you don't know how far the Kenworth
 17 tractor chassis or trailer moved after the
 18 impact with the -- from the Peterbilt?
 19 A. No.
 20 Q. Did the -- Were there any markings on the
 21 pavement when -- you know, from any part of
 22 this accident sequence when Messerschmidt
 23 and Johnson made their site inspection in

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1 late February of '05?
 2 A. That's the map.
 3 Q. All right. The map -- Yeah. The map
 4 you've produced we've got -- I'm going
 5 to -- We've got two copies of that. The
 6 first -- Is this the one that you just
 7 produced?
 8 A. Yes, it is.
 9 Q. And that's exactly like -- And that's the
 10 final map that you used to support any of
 11 your opinions in this case?
 12 A. Yes.
 13 Q. And we're going to mark that as Defendant's
 14 Exhibit 9.
 15 (Defendant's Exhibit 9 was marked
 16 for identification.)
 17 (Off-the-Record discussion.)
 18 Q. Do you know when this particular version of
 19 this map was completed?
 20 A. Well, the --
 21 Q. The date?
 22 A. The site map was done at the date I told
 23 you before, which was February 23, '05.

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1 When it was actually rendered onto paper
 2 was a couple of days later. As far as I
 3 know, it was the next day. When this
 4 specific copy was made, I don't know.
 5 There's no way to tell this.
 6 Q. Well, there were -- there were earlier
 7 versions or drafts of this map; correct?
 8 A. No. There are other maps that -- One shows
 9 typical headlight pattern.
 10 Q. That's the one I want to look at.
 11 A. And there's one that doesn't show the
 12 trucks at all. It just shows the marks on
 13 the road and then the road.
 14 Q. I understand. This -- The one that --
 15 A. This is another one that shows just the
 16 road and the markings.
 17 Q. Right.
 18 Show me the one that's got the
 19 headlight positions of the Kenworth.
 20 A. Well, we don't know what the Kenworth's
 21 tractor position was. But the
 22 representations of what the headlight
 23 pattern might have been for different

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1 positions of the tractor are shown in, I
 2 think, that map you're holding.
 3 Q. This is the one I want to look at. I want
 4 to mark this one, but I'd rather mark your
 5 copy because it's in color. I don't have a
 6 copy that's in color. And we can -- Our
 7 court reporter will get you your original
 8 back if you need it, but she can, I think,
 9 copy these in color.
 10 MR. BROUGHTON: Can't you?
 11 COURT REPORTER: Yes.
 12 Q. So that we'll all have a color copy. Henry
 13 may have a color copy, but I don't. It's
 14 this one right here. That's it. I'm
 15 marking Exhibit 10.
 16 (Defendant's Exhibit 10 was marked
 17 for identification.)
 18 Q. This was one of the maps. Was this map
 19 done -- Do you know -- Do you show what
 20 date that map was done?
 21 A. No, it doesn't show.
 22 Q. Was it before or after the one we marked as
 23 Defendant's Exhibit 9?

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1 A. I don't know.
 2 Q. Who prepared this?
 3 A. Gary Johnson.
 4 Q. And only Gary?
 5 A. Yes.
 6 Q. Was he the only one that had any input on
 7 this map?
 8 A. He's the one that used the CAD program to
 9 download the data from the total station
 10 and complete the map from that data.
 11 Q. All right. And on Defendant's Exhibit --
 12 Gary Johnson was at the site; right? He
 13 actually did a site inspection; correct?
 14 A. It takes two people in most cases to do a
 15 mapping of the site. We have a total
 16 station that will measure with laser
 17 sighting to points on the highway up to
 18 about 600 feet. But once you get beyond
 19 that, you have to have a reflector coil.
 20 And if the curvature of the road obscures
 21 the points you want to measure, you've got
 22 to have a second man there, so we always
 23 send at least two guys to do a site map.

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1 Q. Did Gary Johnson make an effort to put the
 2 information on Defendant's Exhibit 10 as
 3 accurately as possible based on what he had
 4 to work with?
 5 A. Yes, sir. The measured points that are
 6 used to delineate road edges and fog line
 7 marks and that sort of thing -- the total
 8 station measures those to within a small
 9 fraction of an inch.
 10 Q. On this particular Defendant's Exhibit 10,
 11 there's a -- there's a line in green in the
 12 middle of the page above the scale. At the
 13 bottom of the page, it says headlight
 14 illumination 250 feet, MacInnis SAE.
 15 A. That's low beam.
 16 Q. Did you participate -- Did you help
 17 Mr. Johnson obtain that bit of data?
 18 A. No, I didn't.
 19 Q. But your opinion is that's low beam?
 20 A. Yes.
 21 Q. Do you know why Mr. Johnson used low beam?
 22 A. I don't know.
 23 Q. Do you know if he's referring to the

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1 headlights on the Kenworth or on the
 2 Peterbilt?
 3 A. Neither one.
 4 Q. The next line underneath there says PRT
 5 distance. What's PRT distance?
 6 A. Perception-reaction time.
 7 Q. All right. He used 153 feet and one and a
 8 half seconds.
 9 A. Okay.
 10 Q. Do you know why he used that information?
 11 A. No. That's a typical default value for
 12 perception-reaction time.
 13 Q. Did you consult with him on that?
 14 A. I don't recall doing so.
 15 Q. Do you know why he was putting the
 16 headlight illumination in this
 17 perception-reaction distance on this
 18 particular map?
 19 A. No, I don't.
 20 Q. The next line says stopping distance, .5
 21 drag, 70 miles per hour, 326 feet.
 22 A. Right.
 23 Q. Did I state that correctly?

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1 A. Yeah.
 2 Q. And that's something that you or Gary
 3 Johnson put on that map?
 4 A. He put it on the map. I'm sure he
 5 calculated it. That's -- I think that's
 6 the figure I got a while ago for the skid
 7 distance, wasn't it, for 70 miles an hour
 8 at .5?
 9 Q. Do you know why he used .5?
 10 A. That's within the range of trucks. If
 11 they've got a wheel or two out of
 12 adjustment, then it's lower than .5.
 13 Q. Do you know why he used -- Do you know why
 14 he used .5 on this particular case?
 15 A. No, I don't.
 16 Q. But .5 is certainly reasonable and
 17 acceptable?
 18 A. It is. You find that on a lot of trucks,
 19 because they don't all keep their brake
 20 adjustment within specifications all the
 21 time.
 22 Q. And at the .5 drag factor that we
 23 calculated before with the high beams on

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1 and illuminating 350 feet as you have
 2 assumed they would, the impact speed of the
 3 Peterbilt and the Kenworth would have been
 4 fifty -- something in the 52 mile an hour
 5 range; correct?
 6 A. Yes.
 7 Q. And without going through the calculations,
 8 if the headlight illumination on the
 9 Peterbilt is less than 350 or if he had his
 10 low beams on and it gets even down in the
 11 250 range, we can only assume that the
 12 impact speed is going to be even higher?
 13 A. Yeah. If we assume his brakes are out of
 14 adjustment, it's going to be even higher
 15 than that.
 16 Q. Even doing -- Even with Mr. Thompson doing
 17 everything a reasonable truckdriver would
 18 do at the time of this accident?
 19 MR. PENICK: Object to the form of
 20 the question.
 21 A. We've been through that before. Yes, that
 22 is correct.
 23 Q. All right. Now, on this map, is there any

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1 part of this depiction on Defendant's
 2 Exhibit 10 --
 3 MR. PENICK: Well, let me object
 4 to -- add to my objection on
 5 that last question, because it
 6 presupposes an impact. And
 7 the calculation was what would
 8 be the speed at the time he
 9 reached the point where the
 10 truck was, not whether or not
 11 it would actually impact with
 12 the truck --
 13 Q. On Defendant's --
 14 MR. PENICK: -- the Kenworth.
 15 Q. On Defendant's Exhibit 10, is there
 16 anything on there that in your opinion
 17 Mr. Johnson has depicted inaccurately or
 18 incorrectly?
 19 A. No. 1.5 is an accepted part of the range
 20 of perception-reaction time. .5 is within
 21 what we observe on trucks actually on the
 22 road, as well as .6, below .5 for wet
 23 roads.

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1 Q. Do you know the distance from the
2 windshield of the Kenworth to the front
3 bumper of the Kenworth?
4 A. I don't recall that number, but it's
5 probably somewhere in the literature. I
6 don't see a vehicle data. I thought we had
7 a vehicle data section that gave
8 the published truck data. I don't see it
9 right now. It's -- a digital truck index
10 would normally pull that up and put it in
11 the file.
12 Q. Eight to ten feet?
13 A. From the windshield to the front of the
14 truck?
15 Q. To the front bumper.
16 A. In that ballpark.
17 Oh, here's what I'm looking for.
18 Q. What section was that in?
19 A. I don't know. It's in here somewhere. But
20 it's a copy of the Kenworth model T600.
21 Distance from the front axle to the front
22 bumper, 46 inches; to the back of the cab
23 from the front axle, 74 inches. All we

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1 could do is sort of scale it. It doesn't
2 give that particular dimension. And I
3 don't know how authentic that drawing is
4 from a scale of factors other than the ones
5 they give. It looks like it's just over
6 about five feet, about five feet two inches
7 from the front of the hood to the base of
8 the windshield.
9 Q. All right. And the -- Do you know what the
10 terrain looked like off the right side of
11 I-85 going north towards Atlanta at the
12 point where the Kenworth rolled over?
13 A. All I have is the aerial photographs. I
14 can see the shoulder -- paved shoulder of
15 the road. I don't see in that
16 photograph -- Okay.
17 Q. If the Kenworth headlights were on, do you
18 know what they -- after the rollover, do
19 you know what, if anything, they would have
20 illuminated out in that direction?
21 A. Well, the trees and bushes and such.
22 Q. Do you know if there were any trees and
23 bushes and such in the direction that the

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1 headlights were pointed?
2 A. I don't know exactly where the headlights
3 were pointed or exactly where along in
4 these photographs the general point of rest
5 was, so I -- I don't know whether there
6 were trees or bushes out there. All I know
7 is the embankments that are there.
8 Q. Does Defendant's Exhibit 10 show three
9 possible -- show three possible
10 configurations of the Kenworth cab after
11 the rollover?
12 A. Yes.
13 Q. You just don't know what terrain, if any,
14 there was, bushes, trees and such out in
15 front of any of those headlight positions?
16 A. I haven't attempted to locate that point
17 with respect to these pictures.
18 Q. Right. The drawing -- I know it's not --
19 Y'all were not able to tell the precise
20 final resting place of the Kenworth and the
21 trailer after the rollover. But the
22 depiction in Defendant's Exhibit 10 that
23 Mr. Johnson did at your direction shows the

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1 cab of the Kenworth from the windshield out
2 to the bumper over the right fog line,
3 correct, in one of those depictions?
4 A. Yes.
5 Q. So that would have put the front of the
6 Kenworth five or six feet out into that
7 right shoulder; correct?
8 A. That's true.
9 Q. And isn't it fair -- And I'm just talking
10 about being fair and reasonable. Isn't it
11 fair and reasonable that a driver in this
12 Peterbilt at 70 miles per hour in the dark
13 of night under these circumstances would
14 not be held to a decision to steer his
15 vehicle off the right side of that highway
16 as you earlier had testified you thought he
17 should have done?
18 A. Well, as you've hypothesized in so many
19 questions, we don't know that that's the
20 exact position before impact, so I don't
21 know that that's -- that that was blocking
22 the shoulder.
23 Q. And we don't know that the Kenworth wasn't

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1 blocking more of the shoulder, do we?

2 A. No.

3 Q. And you and your people have had months to
4 study that situation and even map it with
5 computers and still couldn't decide whether
6 there's enough room over there on that
7 shoulder for an eighteen-wheeler to get
8 by. And you're expecting Mr. Thompson to
9 make that decision in, what, one and a half
10 seconds?

11 MR. PENICK: Let me object to the
12 form of the question. He
13 didn't say there wasn't enough
14 room to get by. The question
15 assumes facts not in
16 evidence.

17 Q. My question is, you had -- you and your
18 associates using computers had two and a
19 half months to try to determine the final
20 resting place and location of that
21 Kenworth. Mr. Thompson had one and half
22 seconds. Do you think it's fair and
23 reasonable to put the burden on him of

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1 driving his -- steering his vehicle off the
2 side -- right side of that highway at 70
3 miles per hour?

4 MR. PENICK: Object to the form of
5 the question. Assumes facts
6 in evidence that he was still
7 going 70 miles an hour when he
8 got to the vehicle -- to the
9 Kenworth.

10 Q. Do you have an answer to my question, or
11 can you answer my question?

12 A. Well, your question assumes that the truck
13 on its side was blocking the shoulder. If
14 that's the case, no. But we don't know
15 that that's the case.

16 Q. And what's -- what's a reasonable
17 truckdriver at 70 miles an hour with one
18 and a half seconds of perception-reaction
19 time -- what kind of bar do you set for him
20 to make those decisions?

21 A. Well, I think a truckdriver is obligated to
22 be more alert than a passenger car driver
23 and that he should have been able to

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1 perceive there's something in the road at a
2 distance far enough to slow down to keep
3 this from being an accident of that
4 severity.

5 Q. You don't really believe that he should
6 have steered his vehicle off the right side
7 of the highway at 70 miles an hour, do you?

8 MR. PENICK: Object to the form of
9 the question. Assuming that
10 he would be traveling 70 miles
11 an hour when he got to the
12 Kenworth. And the testimony
13 has been that he would not.
14 If he had applied his brakes,
15 he wouldn't have been going 70
16 miles an hour.

17 A. I've already answered your questions.

18 Q. At what speed, in your opinion, would it
19 have been reasonable for him to drive his
20 eighteen-wheeler off that I-85 in the
21 middle of the night without knowing what's
22 over there?

23 A. He's got headlights, hasn't he, or does he

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1 have them off? I can't answer that
2 question. I don't know what his -- You
3 know, just to pull a number out of the hat,
4 I don't know.

5 Q. Is there such a thing as a minimum legal
6 braking deceleration rate for
7 tractor-trailers?

8 A. There is.

9 Q. What is that?

10 A. I don't recall. It's in the federal
11 regulations.

12 Q. If -- At that minimum legal braking
13 deceleration rate, would a tractor-trailer
14 rig leave skid marks?

15 A. No. It wouldn't have the brakes adjusted
16 enough to do that. And to get to a value
17 that low, the pushrod travel on several of
18 the brakes would have to be in excess of
19 out-of-service criteria.

20 Q. And, again, you have no information on that
21 because you didn't have -- you have not
22 inspected the Peterbilt or its trailer?

23 A. No. I know basically that the minimum

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1 times of an oncoming truckdriver; correct?
 2 MR. PENICK: Asked and answered.
 3 He said --
 4 Q. Correct?
 5 MR. PENICK: -- your driver didn't
 6 say anything about dust being
 7 kicked up, so he assumed that
 8 it wasn't.
 9 Q. You haven't talked to my driver, have you?
 10 MR. PENICK: In his affidavit he
 11 said it.
 12 A. No, I haven't. I read his affidavit, but I
 13 haven't talked to him.
 14 Q. Well, would that change your opinions?
 15 Would it change your opinions if dust was
 16 kicked up to some extent by that Kenworth
 17 either going through the median or coming
 18 back up onto the surface?
 19 A. And it's still there when the Peterbilt
 20 gets there?
 21 Q. Yes.
 22 A. Yeah. I think the Peterbilt driver would
 23 be very foolish not to say something is

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1 going on with dust in the road and start
 2 slowing down and looking for what's causing
 3 that dust.
 4 Q. So it would affect your opinions? Is
 5 that --
 6 A. Yeah.
 7 Q. Would that mean you're going to have to
 8 reformulate all of your opinions in this
 9 case if you get some additional facts?
 10 A. No. Well, if additional facts come in, but
 11 that's certainly not a fact. That's just
 12 another speculation.
 13 Q. Well, you're speculating that there was no
 14 dust kicked up by the --
 15 A. I assume that there was not a significant
 16 amount of dust kicked up. The Peterbilt
 17 driver should have noticed that and would
 18 have, I think, under reasonable
 19 circumstances --
 20 Q. At a certain point --
 21 A. -- said something about it in his
 22 statement.
 23 Q. Well, he could have mis -- he could have

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1 misidentified any cloud as being fog;
 2 correct?
 3 A. Not a cloud of dust. He could have
 4 misidentified that truck as being something
 5 in the road, which apparently he did. He
 6 didn't stop for it.
 7 Q. You're saying under certain conditions that
 8 the dust -- a dust kicked up cannot give
 9 the appearance of going through a wisp of
 10 fog?
 11 A. I haven't seen any like that, no.
 12 Q. Have you ever driven an eighteen-wheeler?
 13 A. Yeah.
 14 Q. Have you ever driven behind an
 15 eighteen-wheeler that went through the
 16 median like Mr. Morris did?
 17 A. No, I don't believe I have.
 18 Q. And you've never seen a dust cloud kicked
 19 up by an eighteen-wheeler?
 20 A. I have.
 21 Q. At night?
 22 A. I probably have. Not as a driver behind --
 23 Not in a -- Not driving an

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1 eighteen-wheeler, but I've seen them kick
 2 up dust clouds running off the road.
 3 Q. Is there any test data or literature data
 4 or studies or reports that you're aware of
 5 on this type condition about the
 6 perception-reaction time of a -- of an
 7 approaching truck or automobile driver to a
 8 vehicle overturned in front of them with
 9 just the bottom facing oncoming traffic?
 10 A. I don't know of any.
 11 Q. So we really don't know how difficult that
 12 would be to perceive and react to by
 13 anybody's study or reported studies?
 14 A. I don't know of any test data.
 15 Q. The -- We talked about, I think, the
 16 running lights and the headlights and the
 17 taillights. Have you done any testing or
 18 studying or are you familiar with any
 19 literature that would support an opinion
 20 that any of the non-illuminated reflectors
 21 or reflector tape on that Kenworth would
 22 have been visible to Mr. Thompson as he
 23 approached?

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1 MR. PENICK: Are you asking about
2 nonreflecting tape or
3 reflecting tape?
4 MR. BROUGHTON: No. No.
5 A. The light lenses?
6 Q. Yeah. There's some -- Aren't there some --
7 Aren't there some reflectors --
8 A. There are reflectors --
9 Q. -- used that don't -- And I don't know if
10 they were on this truck or not. You don't
11 either, because you didn't get a chance to
12 look at it. I understand that. But
13 there -- Some trucks have reflector tape.
14 Some trucks have as I understand it glass
15 reflectors that don't have a light bulb
16 illuminating. Am I wrong about that?
17 A. I don't know. I'm aware that they need --
18 they're required by the federal regulations
19 to have a marker light at the front rear
20 corners and midway on the trailer. And
21 normally those little lights extend an inch
22 or so above the surface of the trailer.
23 They are highly reflective even if the

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1 lights aren't on.
2 One of the tricks I use or techniques I
3 use to locate and identify those lights in
4 broad daylight is the use of a flash. If
5 you use a flashgun, it looks like those
6 lights are spotlights shining back at you.
7 So they do reflect a lot of light when you
8 shine a light on them.
9 Q. What does the bottom of one of those look
10 like eight feet up in the air after a
11 vehicle has overturned?
12 A. Well, it's not eight feet up in the air to
13 the driver of the Peterbilt, because he's
14 nine and a half feet up in the air. The
15 ones that I have -- that I recall have some
16 sort of pattern in the plastic cover all
17 the way inside around the surface of
18 the lens.
19 Q. Have you ever rolled a vehicle and looked
20 at the bottom of those reflector lights
21 eight feet off the ground to see what you
22 could or couldn't see?
23 A. Well, the bottom of those lights would look

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1 the same eight feet off the ground as they
2 do when I have them on my desk looking at
3 them from the bottom.
4 Q. Those don't -- lights don't pick up road
5 debris and road dirt and grime?
6 A. They may do that.
7 Q. So you have no idea what those would look
8 like, do you, to an on -- to an approaching
9 Peterbilt?
10 MR. PENICK: Are you talking about
11 the bottom of the reflector
12 lights?
13 THE WITNESS: Yeah.
14 MR. BROUGHTON: Which is the part
15 that he would be seeing as
16 he's coming up on that
17 vehicle.
18 A. I don't know how much light they would
19 reflect. I would expect them to reflect
20 some, but I don't know how much.
21 Q. We don't have any tests or studies to
22 verify what would be --
23 A. I haven't looked up test data on that, no.

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1 (Off-the-Record discussion.)
2 (Brief recess was taken.)
3 Q. And I apologize if I've asked this, but
4 I've got to know if I haven't asked it --
5 if you haven't answered this. Do you know
6 why Morris' vehicle left I-85 down -- and
7 went down into the median?
8 A. Yeah, I've answered it. I don't know.
9 Q. You don't know.
10 And we don't know if he had an
11 equipment problem or fell asleep or had a
12 medical emergency or any of the above?
13 A. Well, that's covered in the answer I don't
14 know.
15 Q. Okay. You know, I've had plenty of experts
16 that don't know in the deposition that
17 later know something at trial and that's
18 why I have to keep -- make sure I've got
19 your answer on that.
20 A. So you ask it --
21 Q. Does Messerschmidt or Johnson -- Do either
22 one of those guys know why the vehicle left
23 the highway?

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1 that is from the Peterbilt driver applying
2 his brakes and slowing and steering to the
3 right shoulder. As the accident report
4 diagram indicates, the initial collision
5 was in the left inside lane and since this
6 is underneath the cab of the truck would
7 indicate that the drawing that shows the
8 light patterns doesn't accurately represent
9 the position of the Morris truck when it
10 came to rest after sliding before it was
11 hit by Peterbilt truck.

12 And, in fact, we've said a number of
13 times in there that we don't know -- And, I
14 mean, we've covered it a dozen or more
15 times in here -- that we don't know exactly
16 where the Morris truck stopped after it
17 overturned. It's just absolutely
18 unreasonable to assume that it was over in
19 the right lane when it was hit when all of
20 the markings and debris are shown in the
21 left lane and in the median. So there
22 should have been opportunity for the
23 Peterbilt driver to slow and steer right

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1 and go around Morris' truck.

2 Q. When did you formulate that opinion?

3 A. I don't have a date tabbed on that. I
4 don't know.

5 Q. Where did you write down that opinion?

6 A. I didn't.

7 Q. You --

8 A. That's implicit in these other things.

9 Q. So that makes -- that makes Johnson and
10 Messerschmidt's map drawings totally
11 inaccurate; correct?

12 A. It makes them diagrammatic of one factor,
13 which doesn't represent, as we've said over
14 and over and over, where the truck came to
15 rest after it overturned. I think you'd be
16 very hard pressed to find any accuracy in
17 the road dimensions, the location of the
18 strike marks, the location of the 70 mile
19 per hour marks, any of the other things
20 that are in the diagram. And we said we
21 don't know exactly where the truck ends
22 up.

23 Q. Where does it show in the accident report

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1 that --

2 A. On the diagram.

3 Q. Where does it show in the accident report
4 where the front bumper of the Morris
5 tractor was at impact?

6 A. It shows a point of impact in the left lane
7 of the trooper's diagram. And if that
8 impact was underneath the driver's
9 position, then the front of the truck would
10 have been some seven or eight feet maximum
11 beyond that point which would have not even
12 completely blocked the right lane.

13 Q. Where does it show in that accident report
14 where the front bumper of the Morris --

15 A. It shows --

16 Q. -- Kenworth tractor was?

17 A. -- where the point of impact was. And we
18 have to deduce that from the dimensions of
19 the truck. He doesn't try to show the
20 position of the truck after it comes to
21 stop from the slide.

22 Q. And -- Well, let me ask you this. Will you
23 rely on the testimony of the investigating

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1 troopers as to explaining their drawing and
2 diagram and rely on their accuracy when we
3 get their testimony?

4 A. I will have to, because this diagram is the
5 only thing we have on site.

6 Q. And after -- Today is June 22, 2006;
7 correct?

8 A. As far as I know.

9 Q. And you first rendered your opinions --
10 your sworn opinions under oath, an
11 affidavit in March of 2004; correct -- or
12 2005; correct?

13 A. I'm -- Yeah.

14 Q. And that was after your thorough
15 investigation that was using all the
16 methodologies used by accident
17 reconstructionists and after a careful
18 review of the Alabama Uniform Accident
19 Report; right?

20 A. Yeah.

21 Q. And there's nothing in that sworn affidavit
22 or report issued back in March of 2005 that
23 mentions anything about an impact in the

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1 left lane, is there?
 2 A. No.
 3 Q. So now you're changing your opinion as to
 4 where the impact was?
 5 MR. PENICK: Objection --
 6 Objection to that question.
 7 If he --
 8 Q. Is that something you missed --
 9 MR. PENICK: Let me object. Let
 10 me put my objection.
 11 Q. -- in the year --
 12 MR. PENICK: Let me put my
 13 objection. If he didn't
 14 mention it --
 15 MR. BROUGHTON: Protect your
 16 witness any way you want to.
 17 MR. PENICK: If he didn't
 18 mention it one way or the
 19 other --
 20 MR. BROUGHTON: You can offer what
 21 he's supposed to testify to if
 22 you want to.
 23 MR. PENICK: I'm just trying to

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1 get my objection --
 2 MR. BROUGHTON: If you're going to
 3 coach him, you might as well
 4 just tell him what you want
 5 him to say.
 6 MR. PENICK: Just trying to get my
 7 objection in. That's all.
 8 Q. Let me ask you this.
 9 MR. PENICK: Let me get my
 10 objection -- Whoa. Whoa.
 11 Whoa. Let me get my objection
 12 in. Hold up. Hold up.
 13 If he didn't say in the
 14 report, as your question
 15 supposes -- he didn't say
 16 whether the point of impact
 17 was in the left lane or the
 18 right lane, how could he be
 19 changing it now if he
 20 hadn't -- didn't mention it at
 21 all?
 22 So my objection is that
 23 the question is assuming facts

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1 that's not in evidence because
 2 he didn't say one way or the
 3 other.
 4 Q. Well, I take it, then, that the point of
 5 impact is not a critical or important or
 6 significant item in the accident
 7 reconstruction business; is that correct?
 8 A. If -- You can take it that way if you want
 9 to.
 10 Q. Well, is it or isn't it?
 11 A. Well, impact is an important point, yes.
 12 Q. It's very critical, isn't it?
 13 A. I believe I said, yes, it's an important
 14 point.
 15 Q. Is it a critical point or just an important
 16 point?
 17 A. Well, you have to define --
 18 MR. PENICK: You're picking.
 19 Objection.
 20 Q. Well, what's the difference --
 21 MR. PENICK: Wait. Wait. We're
 22 wasting time. You're arguing
 23 and quibbling about words.

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1 Let's try to go on with the
 2 question.
 3 Q. Well, let me ask you this -- We'll accept
 4 your -- It's an important point; right --
 5 the point of impact; correct?
 6 A. That's right.
 7 Q. And you testified earlier today that
 8 neither you nor Mr. Johnson nor
 9 Mr. Messerschmidt ever determined the point
 10 of impact or an area of impact in this
 11 case; correct?
 12 A. We could not from the marks on the site.
 13 But we also said in the statement and in
 14 the report that we made use of the ATAP --
 15 AUTAR many times over. And that's the part
 16 of the -- part of the accident report, that
 17 diagram.
 18 Q. And --
 19 MR. PENICK: Let me clear up his
 20 testimony. The AUTAR, is that
 21 the Alabama Uniform Traffic
 22 Accident Report?
 23 THE WITNESS: Yeah.

